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The Solicitors' Journal

[ESTABLISHED 1857.] [REGISTERED AS A NEWSPAPER.]

VOL. LXXVI. No. 28 [PAGES 481 TO 500]. Saturday, July 9, 1932. PUBLISHED WEEKLY PRICE ONE SHILLING

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The Solicitors' Journal

VOL. LXXVI. **Saturday, July 9, 1932.** No. 28

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Current Topics.

Prior Claims by Courts on Counsel.

DURING HIS later years at the Bar it was, we understand, the practice of Sir EDWARD (now Lord) CARSON to accept only one brief at a time, and, consequently, he was not faced with the difficulty sometimes experienced by busy counsel, who are unable to act on the same self-denying ordinance, in the endeavour to solve the problem which Sir BOYLE ROCHE, "not being a bird," found insoluble, namely, the inability to be in two or three places at the same time. Again and again a clash of interest occurs owing to cases coming on simultaneously in different courts. By the exercise of considerable physical agility the difficulty can occasionally be mastered, but, when this is impracticable, what is to be done ? One or two rules have been sanctioned by the courts which tend to some extent to mitigate the trouble. A good many years ago the House of Lords laid it down that it has the first claim on the attendance of counsel, that is, if the particular counsel is briefed in two cases which come into the lists for the same day, one, say in the Court of Appeal and the other in the House of Lords, counsel is bound to give his services to the case before the supreme appellate tribunal. When such a clashing occurs the Court of Appeal will allow the case before it to stand out till the case in the House of Lords has been heard, or at all events till the particular counsel is released. Further, the Court of Appeal permits cases coming from any of the circuits to stand out if counsel in these are engaged at the same time on the circuit. Quite recently an attempt has been made to get the principle affecting cases in the House of Lords extended to cases in the Judicial Committee of the Privy Council. Only recently, counsel, who was to be engaged before the Committee, applied to the Court of Appeal to allow a case which would come on in the Court of Appeal on the same day to stand out till after the hearing in the Privy Council. Lord Justice SCRUTTON intimated that he had discussed this question with the Master of the Rolls and they had decided that they could not extend the rule obtaining as to cases in the House of Lords to those in the Privy Council. Great though the latter tribunal is—the supreme court for the Dominions and Colonies—it is an anomalous tribunal so far as this country is concerned, in that its decisions are not binding on the courts here, save perhaps in Prize cases, and the fact that one judgment only is delivered, although this theoretically may be sound, has militated against the same weight being given to the Committee's decisions in this country as that which attaches to those of the House of Lords. Be this as it may, it has been made clear that it does not rank with the House of Lords in so far as affects the attendance of counsel.

Security for Costs by Poor Persons.

THE RECENT case of *Bottomley* v. *Woolworths Ltd.*, in which the defendants applied for security for costs against the plaintiff (who had obtained a certificate giving him leave to appeal as a poor person against a judgment which was adverse to him in the High Court) appears to be of more importance than would seem at first sight. SCRUTTON, L.J., in his judgment refusing to order security to be given, said that when once a certificate had been granted to a litigant to appeal as a poor person he could not be made liable for costs. So long, therefore, as the certificate stood, he, the learned Lord Justice, did not see how the court could make an order for security for costs. It has become a recognised practice, since the decision in *Cook* v. *Imperial Tobacco Co.* (1922), 2 K.B. 158, for orders under s. 66 of the County Courts Act, 1922, to be made against poor persons who are unable to give security for costs remitting their actions to the county court. There seems on the surface to be some inconsistency between the judgment in the present case and that given in 1922 by the Court of Appeal; and it will not be surprising if the whole subject comes under review in the near future.

A Rose by any other Name . . . !

IT HAS been suggested that when the name of the old Local Government Board was changed to the more euphonious title of "Ministry of Health," the bureaucracy stole a march upon the public, and especially upon the property-owning section of the ratepayers—and that it would have been much more appropriate and in every way more accurate had the new title chosen been "the Ministry of Local Government." The reason why this suggestion is being put forward at the present time is to be found in the fact that property owners are finding themselves, when they are in conflict with local authorities in regard to highway improvements (which frequently involve the acquisition of land), faced with what are regarded as very onerous conditions arising out of Pt. 2 of the Public Health Act, 1925, and various other statutes relating to town planning and the like. The average property-owner, being a layman, when he sees that a "Public Health" Act has been passed, is prone to assume that it relates to drainage and sanitation generally; and it seems to have come as a shock to many property-owners to have discovered that Pt. 2 of the Public Health Act, 1925, the pressure of which is now beginning to be felt, has nothing to do with sanitary matters, but deals (as its sub-title indicates) with "streets and buildings." Moreover, the country property-owner associates the word "street" with a roadway in a town, and is only just beginning to discover that an ancient highway may be converted into a "street" by order duly made under the Public Health Act, 1925. We must confess to

some degree of sympathy with the complaint. Would it not be better, instead of describing a statute like that of 1925 as a "Public Health" Act, to give it a title more in accordance with its extensive provisions touching highways and town planning?

Coal Mines and Water.

In a recent case before the Railway and Canal Commission the applicants applied for two ancillary rights under s. 3 of the Mines (Working Facilities and Support) Act, 1923, those rights being to have a barrier of coal left unworked in two seams of coal in the respondents' mine which was adjacent to and at a higher level than that of the applicants. The barrier was required to be left in order to prevent water from the respondents' mine running down into the applicants' workings. The applicants contended that if the barrier was not left and the water came into their mine the cost of pumping would be prohibitive. In an application of this nature for ancillary rights three things must be established before the court will grant them and override the respondents' common law rights. First, it must be proved by the applicants that the proper and efficient working of their mine will be unduly hampered in the absence of the rights; secondly, they must show that the respondents had unreasonably refused to grant the facilities asked for; and lastly, that it is in the national interest that the rights asked for should be granted. In the present case the matter ultimately resolved itself into the question of national interest. On the facts as established one or other of the adjoining collieries would have to bear the cost of pumping out the water. If the application were not granted the burden would fall on the applicants. On that ground the court refused to grant the application; the only interest involved in the case, it was pointed out, was not the national interest, but simply the private and individual interests of the applicants and the respondents with regard to the cost of dealing with the volume of water in the areas. It was not proved that there was any appreciable risk of injury to the applicants' mine, or loss of coal or diminution of employment. On the other hand, had the barrier been left unworked, between 70,000 and 80,000 tons of coal would have been sterilized—clearly a matter contrary to the national interest. The law relating to the position of the mine-owner on the higher level is to be found in *Baird* v. *Williamson*, 12 W.R. 150; 15 C.B. (N.S.) 376. Such an owner has a right to work the whole of his mine in the usual and proper manner for the purpose of getting out the minerals, and in such circumstances he is not liable for any water which flows by gravitation into an adjoining mine; he has no right, however, by pumping or otherwise, to be an active agent in sending water from his mine into an adjacent one. This decision is quite consistent with the well-known principle in *Rylands* v. *Fletcher*, L.R. 3 H.L. 330, and in the latter case *Baird* v. *Williamson*, *supra*, was referred to.

Material Alteration of a Bill.

The material alteration of a bill of exchange avoids it, except as against persons making, authorising or assenting to the alteration and subsequent indorsers, under s. 64 of the Bills of Exchange Act, 1882. An interesting decision on what constitutes a material alteration within the section was added to the numerous reported cases on this point on 13th June in *Koch* v. *Dicks* [1932] W.N. 156, when Mr. Justice Charles decided that the alteration of the place where a bill is drawn so as to transform an inland bill into a foreign bill is a material alteration within the meaning of the section. The plaintiff sued on seven bills drawn in London by a German company to their own order on the defendant, accepted by the defendant and indorsed by the German company to the plaintiff. The plaintiff, in order to discount the bills with his bankers in Germany, altered the place where they were drawn from London to Deisslingen in the case of five of the bills. The defendant denied liability on those bills and brought into court a sum sufficient to satisfy the claim in respect of the two bills which had not been altered. His lordship quoted two authorities on the meaning of "material alteration." Brett, L.J., in *Suffell* v. *Bank of England* (1882), 9 Q.B.D. 555, 568, said: "Any alteration of any instrument seems to me to be material which would alter the business effect of the instrument if used for any ordinary business purposes for which such an instrument or any part of it is used." Sir M. D. Chalmers in his "Digest of the Law of Bills of Exchange," 9th ed., p. 255, in a note to s. 64, says: "An alteration is material which in any way alters the operation of the bill and the liabilities of the parties, whether the change be prejudicial or beneficial." His lordship pointed out that the bills were altered from inland bills to foreign bills, and that while in the former case it was not necessary to note and protest the bills upon dishonour, in the latter case it was necessary, and the charges were recoverable under s. 57. The plaintiff had relied on a statement in the second edition of "Halsbury's Laws of England," Vol. II, p. 713, Note (k) to the effect that the alteration of the place where the bills were drawn is not a material alteration of the bill, on the authority of *Foster* v. *Driscoll* [1929] 1 K.B. 470. In that case the document was not a bill until the name of the drawer and the place where it was drawn were inserted, and the effect of that decision, as is clear from the statement in "Halsbury," is that that is not the sort of transaction to which the section is intended to apply. Judgment was accordingly entered for the defendant.

The Royal Commission on Lotteries and Betting.

The dangers and futilities of our laws as to betting, gaming and lotteries have so often been stressed in this journal in the last few years that our more diligent readers will find neither surprise nor novelty in the evidence of Sir Ernley Blackwell and Sir Trevor Bigham before the Royal Commission. Even the fact that the Home Office remains blandly unaware of the law against private lotteries or sweepstakes, as revealed by Sir Ernley's evidence, appears in our note 73 Sol. J. 274. Similarly, Sir Trevor's evidence on street betting merely follows that of Lord Byng in the Police Report for 1928, quoted 73 Sol. J. 407, and see also p. 324. The appointment of a Royal Commission, though convenient for a Government, is not necessarily followed by reform. Last year we wrote (75 Sol. J. 400): "It may at least be hoped that public money will not be wasted in the appointment of either a Royal Commission or Select Committee to report on the law as to lotteries, for any bright child who reads the newspapers could tell the Government that that law is a dead letter, and that the officials who attempt to enforce it only make themselves and those who instruct them ridiculous." We can only express the sincere hope that our pessimism will in this instance prove unjustified, but the precedent of the Divorce Commission is not encouraging.

What is a Motor Lorry?

Does a motor car still continue to be insured against damage by fire when its engine is in one place and its body in another? This was the rather curious point which came before Mr. Justice Du Parcq in *Seaton* v. *London General Insurance Co. Ltd.* (*The Times*, 30th June), by way of special case on the award of an arbitrator in favour of a claimant under an insurance policy. The policy provided, *inter alia*, that the claimant should be indemnified against loss, damage or liability actually occurring during the currency of the policy in respect of any motor vehicle the sole property of the claimant while such vehicle was being used by the claimant solely for the purposes warranted in the schedule, and was in the employment, custody and control of the claimant. During the currency of the policy the claimant personally executed repairs on a lorry insured under the policy, and removed the engine from the lorry in his garage to other premises of which he was owner, situated some 150 yards from the garage. He placed the engine in the carpenter's

workshop, but on the very night that the repairs were completed the premises where the engine was kept were burnt down and the engine destroyed. The insurance company repudiated liability, and it was argued on their behalf that there had been an alteration in the matter of the insurance and an alteration and increase in the risk by dividing up the car into parts. It was pointed out that if the claim was upheld a lorry might be taken to pieces and all the parts sent to different places, and the company would be liable on separate insurances of the different parts. Mr. Justice DU PARCQ, in giving judgment upholding the award of the arbitrator in favour of the claimant, said that if he had taken the whole vehicle out of the garage to his other premises and had there removed the engine he would still have been insured, and the mere fact that for the time being the engine was separated from the body which it moved did not deprive the claimant of his right to indemnity. His lordship stated that at the time of the fire the claimant still had a motor lorry, though it was in two parts. The real question appears to be, at what stage of its dismemberment does a motor lorry cease to be a motor lorry? There must be some point in the process of its disintegration when it no longer deserves its name of lorry, but is merely a collection of spare parts. Perhaps future decisions will elucidate this interesting problem.

"Skywriting"—with Limitations.

THE SELECT Committee on Sky-writing has published a report which is likely to have a very mixed reception. The Committee recommends that sky-writing be prohibited only in rural areas which are defined as boroughs or districts with less than 20,000 population. They agree that it is not desirable to "spoil the rural scenery of England or the character of beautiful architecture by the display of sky-writing, whether in the form of advertisements or of words good in themselves but incongruous in their surroundings. There may, of course, be special occasions, such as a country agricultural show, on which a display would be proper and indeed desirable. Provision can be made for such occasions." They recognise that it will be necessary to impose some form of control, particularly to safeguard traffic by air and by water and to secure the defence services from interference. Apparently the Committee were in a difficulty about the legal position of the whole matter and concluded that "if sky-writing is to be brought under legislative control it must be protected from vexatious actions." It will be interesting to see what sort of reception these proposals gain. We shall be surprised if they do not arouse very strong opposition.

Trustee Securities.

WE WOULD draw attention to certain alterations that are being made, commencing in this issue, in the weekly list of "Stock Exchange Prices of certain Trustee Securities," which appears on p. 500. The Government's announcement of the War Loan Conversion Scheme has emphasised the possibility of the early redemption of other stocks. In the past the calculation of the yield with redemption has, in the case of all stocks, been made on the basis of redemption at the latest date. In future this date will be used only in the case of those stocks which stand below par, and for those which stand above par the earliest date will be taken. Two examples will, perhaps, make the effect of this clear: 5 per cent. Conversion Loan, 1944-64, stands this week at 113. The flat yield is £4 8s. 6d., the yield with redemption in 1944 is £3 12s. 11d., and with redemption in 1964 is £4 5s. Croydon 3 per cent. Stock, 1940-60, stands at 88. The flat yield is £3 8s. 2d., the yield with redemption in 1940 is £4 16s. 10d., while with redemption in 1960 it is £3 13s. 11d. The lower figure in each case will be shown in the list as the yield with redemption. The difference is so great that investors cannot afford to overlook it. This alteration, and certain minor improvements which have been made, should increase the usefulness of the list at the present time.

Criminal Law and Practice.

DISCOVERY OF THE BODY IN MURDER TRIALS.

A CONVICTION for murder may ensue even if the body of the victim is missing, but the other evidence of death (which then becomes necessary) is difficult to obtain in drowning cases. This was illustrated in *Rex* v. *Matthews*, at the last Birmingham Assizes, in which the prisoner was indicted for the murder of her infant child—by drowning her in the River Severn, near Gloucester. The case for the prosecution was as follows: (1) the prisoner, having obtained a situation at Gloucester, had left her home at Cinderford with her baby, aged seven months; (2) she returned home alone the same evening, in order to fetch the birth certificate of the baby, who was to be adopted (or so the prisoner said) by a friend of her mistress; (3) next morning, on the way to the house of the mistress, the prisoner confessed to her mother that she had put the baby in the water; (4) her mother then went to the police station with the prisoner, who made a statement that, having reached the river, she "went down on the bank in the field . . . and put the baby in the water. I didn't do anything to her, never knocked her or nothing. I then tried to save her and slipped down myself, but did not go into the water. The baby floated out of my reach." Corroborative evidence was given that (*a*) the prisoner's mackintosh shewed signs of her having slipped; (*b*) the river bank was broken at a spot where there was found a piece of pink ribbon, identified by the prisoner as belonging to the baby's glove. The river (which was tidal) had been extensively dragged, without yielding any trace of the body, which might have been carried into the Bristol Channel. The prosecution submitted that there was a deliberate crime of murder—the inevitable deduction being that the child must have died. It was pointed out for the defence, however, that (1) there was no proof of actual killing or the discovery of the body; (2) the case for the prosecution rested upon the statements of the prisoner, who (as stated by her mother in cross-examination) had suffered in childhood from scarlet fever, tuberculosis and meningitis, and was hysterical and distraught when she first confessed, so that her statements were unreliable. The prosecution did not submit a case of manslaughter, and Lord WRIGHT OF DURLEY (then Mr. Justice Wright) pointed out to the jury that it was no evidence against the prisoner that she took the child away and did not bring her back, as it was not for the prisoner to account for what she did, but for the prosecution to prove her guilty. The prisoner's reference to putting the baby in the water should not receive the worst construction, and if her statement (the only evidence against her) was consistent with accident and not with murder, which involved malice aforethought, there could be no conviction for murder. The jury found the prisoner "Not Guilty," and she was accordingly discharged.

The above ruling—that the prisoner could not be called upon to account for the child—was in accordance with the summing up of Lord ABINGER, C.B., in *Rex* v. *Hopkins* (1838), 8 C. & P. 591. The prisoner, while going from Bristol to Llandogo, was seen carrying her baby (aged sixteen days) at 6 p.m., but she reached her destination alone at 9 p.m. Five days later, there was found in the River Wye, near Tintern, the body of a child, which was slightly older, however, than the prisoner's child, and had different clothes. The jury were reminded, in the summing up, that the body might have come from a distance, as the Wye was tidal, and—in the absence of evidence that her own child was actually dead—they were directed to acquit the prisoner.

An extreme instance of the need for discovery of the body was mentioned in argument in *Rex* v. *Hindmarsh* (1792), 2 Leach's Crown Cases, at p. 571. The prisoner was charged at the Old Bailey with the murder of the captain of a slaving sloop, either by a blow on the head or by throwing him overboard off the coast of Africa, and the jury found that the

deceased was killed by a beating before he was cast into the sea. The prisoner was duly executed, although his counsel had cited the passage in 2 Hale, P.C. 290, viz.: "I would never convict any person of murder or manslaughter, unless the fact were proved to be done, or at least the body found dead." In support of his argument, counsel for the defence mentioned a case in which a child, after being stripped, was thrown into a Liverpool dock, its body not being recovered. In spite of the evidence of eye-witnesses, Mr. Justice GOULD directed the jury that, as the tide flowed in and out of the dock, the living infant might have been carried out to sea. The prisoners were therefore acquitted, but, as pointed out by the learned authors of "Russell on Crimes," there is a query as to the form of the indictment. The latter may have alleged a killing in the actual dock, and, in view of the strict adherence to form then prevalent, the prisoners would receive the benefit of the doubt.

Trustees and the War Loan Conversion.

DURING the last few days the question has been constantly put by trustees to their solicitors—What are our powers and what is our duty with regard to the conversion of the 5 per cent. War Loan which we hold?

Perhaps trustees are the more anxious on these points because of the appeal which has been made by the Government to the patriotism of the stockholders and the oft-repeated official statements to the effect that, by accepting the offer to continue the investment at the reduced rate of interest, holders will be doing a service to the country and assisting in the improvement of the economic conditions obtaining both here and abroad.

Such appeals, doubtless, serve their purpose, but are apt to make trustees nervous. They cannot, they say (and say rightly), be patriotic with other people's money, and they not unnaturally suspect that if conversion is to benefit the community it may be at the expense of the stockholders. If that should be so, whatever their powers, having so often been told that their first duty is to their beneficiaries, they hesitate to accept the Government's offer.

So far as the powers of trustees are concerned there can be no doubt at all.

In anticipation of a conversion scheme, provisions were made in the Finance (No. 2) Act, 1931, which, amongst other things, confer upon trustees the fullest power and give them a complete indemnity if they decide to continue the investment.

By s. 13 (1) of the Act it is enacted that "trustees and other persons acting in an fiduciary character are hereby expressly authorised to make continuance applications."

Section 14 (2) provides that a power of attorney authorising the transfer of a holding is an authority to make a continuance application, and also that "a requirement in any instrument, creating or regulating a trust, that the trustees shall obtain the consent of any person before varying the investment of the trust funds shall not be taken as requiring the trustees to obtain the consent of that person before making a continuance or repayment application." That leaves the trustees a free hand in the matter either to continue or to call for repayment even in cases where the consent of a tenant for life or other person is required for a change of investment.

Then there is s. 15 (2) which sets at rest any doubt as to what the trustees should do with the bonus—"As between persons having any beneficial interest in a holding, any cash bonus payable in respect of the holding shall belong to the persons entitled to the income of the holding on the day when the bonus is payable."

It may be added that it has been made clear by the Government, in reply to questions in the House of Commons, that the bonus will be regarded as capital and not as income and will not be liable, in the hands of the person entitled to receive it, to income tax or to sur-tax.

The person entitled to the income is one of the beneficiaries whose interests the trustees have to consider, and they should, of course, bear in mind that the tax-free bonus can only be obtained by giving notice of continuance on or before the 31st July.

There is a further concession to the tenant for life, in that holders of the new stock will be chargeable to income tax for the year 1933-34 upon the amount of their dividends for that year (i.e., at 3½ per cent.) and not upon the dividends for the previous year for a part of which they will have received dividends at the rate of 5 per cent.

The duty of trustees seems to be to take into consideration such advantages to the person entitled to the income and to consider what their position with respect to the capital will be if they do not give notice of continuance. In that event they will be paid the full amount of their holding at par on the 1st December next, and will be faced with the problem of re-investment at that time. It is not possible to forecast with certainty what the state of the market in trustee securities will then be, but the portents are that trustees will not be able to find a proper investment which will yield more than, if so much as, 3½ per cent., and they will have to bear the cost of re-investment; whilst if, instead of waiting to be paid off, they sell their holding, there will also be the expense of the sale. There will be no brokerage or other cost incidental to continuance of the holding, since the Government has undertaken to pay a commission to cover such charges.

We may add that we regard as unreasonable the objection raised in some quarters to the payment of commission by the Government, since it is obvious that solicitors, bankers and others, through whom notices are given, must be paid for their services involving the completion of the requisite forms and correspondence, and if the Government did not undertake to bear that expense by payment of a commission, it would fall upon the stockholders, and where the holders are trustees would be payable out of capital.

Whilst there is no duty thrown upon trustees to give notice of continuance, we should think that it would be wise for them to do so. If they do not, and it should transpire (as well it may) that there is some loss to the trust in consequence, then from what we know of beneficiaries as a class they are likely to upbraid the trustees with having been lacking in judgment; whilst if they do, it is not so probable that their beneficiaries will "round on" them even if they might, as events turned out, have done better by accepting repayment. Trustees have a thankless task in any case. In this matter we think that they would do well to accept the Government's offer and despatch their notices of continuance without delay.

Legal Maxims.

QUI FACIT PER ALIUM FACIT PER SE.

THIS maxim is the basis of a principal's liability, both civil and criminal, for the acts of his agent.

The application of this maxim in criminal law (and it will not be considered in detail) is limited, with certain exceptions, to cases where a person has counselled or procured the commission of an offence. "It is a general principle of our criminal law that there must be as an essential ingredient in a criminal offence some blameworthy condition of mind": per CAVE, J., in *Chisholm* v. *Doulton* (1889), 22 Q.B.D. 736, at p. 741. The exceptions, which are discussed in Kenny's "Outlines of Criminal Law" (12th ed.), pp. 45 *et seq.*, are: (1) where the offence is a public nuisance, and (2) where a particular statute imposes liability upon a person (without proof of *mens rea*) for the acts of his agent.

The term "agent" is used in its widest sense and means anyone employed to do work for another. It includes both servants and independent contractors.

As a general rule, a principal is only liable, civilly, for his agent's acts if he has expressly or impliedly authorised them. But the maxim—*Omnis ratihabitio retrotrahitur et mandato priori æquiparatur*—applies equally to contracts and torts: see per TINDAL, C.J., in *Wilson* v. *Tumman* (1843), 6 Man. & G. 236, at p. 242. A tort may be ratified, provided that (1) the wrongful act was done on behalf of the person ratifying it, and (2) he knows the nature of the act or is content to sanction it without such knowledge. In *Keighley Maxsted & Co.* v. *Durant* [1901] A.C. 240, the House of Lords decided that a contract made by a person intending to act on behalf of a third party cannot be ratified, unless that person professes so to act at the time the contract was made: see further *Greenwood* v. *Martins Bank Ltd.* [1932] 1 K.B. 371. It is suggested in Salmond's "Torts" (7th ed.), p. 107, that this rule may possibly apply to torts.

Where the act complained of is done without precedent or subsequent authority, the principal may yet be liable for it; but his liability depends, in the first instance, upon his relationship to the agent. The agent may be either a servant or an independent contractor.

The distinction between a servant and an independent contractor is stated succinctly in Salmond's "Torts" (7th ed.), p. 110: "A servant is an agent who works under the supervision and direction of his employer; an independent contractor is one who is his own master." This passage was quoted with approval by MCCARDIE, J., in *Performing Right Society Ltd.* v. *Mitchell and Booker Ltd.* [1924] 1 K.B. 762, at p. 768.

A servant is a person who is subject to the control of his employer not merely as to the work he does, but as to his manner of doing it. The well-known cases of *Quarman* v. *Burnett* (1840), 6 M. & W. 499, and *Jones* v. *Scullard* [1898] 2 Q.B. 565, illustrate this proposition. In the first case, the owners of a carriage hired horses and a driver from a livery-stable keeper. They put the driver into their livery, but did not pay his wages. It was held that the driver was not their servant. It was held otherwise where the owner of horses, harness and a carriage hired a driver. In these circumstances the owner would control the driver as to his handling of the horses. Actual physical control is not, however, necessary; it is sufficient that there exists *the right to control*: *Parker* v. *Miller* (1926), 42 T.L.R. 488.

The question is one of fact to be decided on all the circumstances of the particular case. A teacher has been held to be the servant of the local education authority: *Smith* v. *Martin* [1911] 2 K.B. 775; but nurses are not necessarily servants of a nursing association: *Hall* v. *Lees* [1904] 2 K.B. 602; nor are surgeons necessarily servants of a hospital: *Hillyer* v. *St. Bartholomew's* [1909] 2 K.B. 820.

Gratuitous or *de facto* service is sufficient to constitute the relationship of master and servant: *Samson* v. *Aitchison* [1912] A.C. 844; *Pratt* v. *Patrick* [1924] 1 K.B. 488; *Parker* v. *Miller* (1926), 42 T.L.R. 408. In *Pratt* v. *Patrick*, the defendant, being in his motor car, allowed a friend to drive, and it was held that this friend was the defendant's servant. The principle was extended in *Parker* v. *Miller* to a case where the owner was not present. The matter was stated in the headnote to *Samson* v. *Aitchison* as follows: "Where the owner of a vehicle, being himself in possession and occupation of it, requests or allows another person to drive, this will not of itself exclude his right and duty of control; and, therefore, in the absence of further proof that he has abandoned that right by contract or otherwise, the owner is liable as principal for damage caused by the negligence of the person actually driving." The Divisional Court (SCRUTTON, GREER and SLESSER, L.JJ., sitting as additional judges of the King's Bench Division) in *Barnard* v. *Sully* [1931] W.N. 180, held that evidence of ownership of a motor car is *primâ facie* evidence that, at the time of a collision, the motor car was being driven by the owner or by his servant or agent; but this evidence may be rebutted. This case puts the burden of proof, when ownership has been established, upon the owner, who must then prove, if he can, that the driver was not his servant.

A man in the general employment of one person may be the servant of another for a particular purpose: *Rourke* v. *White Moss Colliery Co.*, 2 C.P.D. 205; *Donovan* v. *Laing* [1893] 1 Q.B. 629; *Bain* v. *Central Vermont Rly. Co.* [1921] 2 A.C. 412. Then the test is, in the words of BOWEN, L.J., in *Donovan's Case*: "We have only to consider in whose employment the man was at the time when the acts complained of were done, in this sense, that by the employer is meant the person who has a right at the moment to control the doing of the act." If this test is satisfied, it fixes the master with liability not only to third parties, but even to the general employer: *Société Maritime Française* v. *Shanghai Dock Co.* [1921] A.C. 417; *Bull* v. *West African Shipping Co.* [1927] A.C. 686; *Leggott* v. *Normanton* (1929), 98 L.J. K.B. 145.

A master is liable for all torts committed by his servant *in the course of the employment*, though the tort be of a wilful character or amount to a crime: *Lloyd* v. *Grace, Smith & Co.* [1912] A.C. 716; *Dyer* v. *Munday* [1895] 1 Q.B. 742. If the tort is so connected with an act which is authorised as to be a manner of doing it, the tortious act is within the course of the employment; and if so, it matters not that the particular tortious act is unauthorised or forbidden, for "the law is not so futile as to allow a master, by giving secret instructions to his servant, to discharge himself from liability": see per WILLES, J., in *Limpus* v. *L.G.O.C.*, 1 H. & C. 526, at p. 539. Thus, an employer has been held responsible for the negligent act of his servant in carrying out work which he was employed to do, although the act incidentally involved a trespass which was unauthorised: *Goh Choon Seng* v. *Lee Kim Soo* [1925] A.C. 550.

The authority to do an act may be implied, e.g., a servant has implied authority to take reasonable steps to protect his master's property: *Poland* v. *Parr* [1927] 1 K.B. 236. But employment by an omnibus company does not authorise a conductor to drive the omnibus: *Beard* v. *L.G.O.C.* [1900] 2 Q.B. 530. If, however, the driver delegates his duties to a conductor, that is evidence of negligence on the part of the driver: *Ricketts* v. *Thos. Tilling Ltd.* [1915] 1 K.B. 644. These cases should now be read with *Barnard* v. *Sully*.

Difficulty has often arisen in cases where a coachman or chauffeur has, whilst about his master's business, deviated from his course for some purpose of his own. Then the question is whether he has so deviated as to be "on a frolic of his own." COCKBURN, C.J., in *Storey* v. *Ashton* (1869), L.R. 4 Q.B. 476, at p. 479, said: "I am very far from saying, if the servant when going on his master's business took a somewhat longer road, that owing to this deviation he would cease to be in the employment of the master . . .; in such cases, it is a question of degree as to how far the deviation could be considered a separate journey." If, therefore, a servant is purely on his own business, the master is not liable; similarly, where a master permits his servant to use his property for the servant's own ends: *Britt* v. *Galmoye* (1928), 44 T.L.R. 294.

The tortious act must be committed *in the course of the employment*, and not merely contemporaneous with it. In *Williams* v. *Jones* (1865), 3 H. & C. 602, the defendant employed his servant to make a signboard in a shed lent by the plaintiff. The servant lit his pipe while so employed, and set the shed on fire by negligently throwing down the light used by him. It was held that the defendant was not liable. In *Jefferson* v. *Derbyshire Farmers Ltd.* [1921] 2 K.B. 281, the defendants' servant was engaged on his masters' business in a garage leased from the plaintiff. The servant drew petrol from a drum, and while so doing lit a cigarette

and threw the match on the floor, causing the petrol to ignite and burn down the garage. The defendants were held responsible. To smoke while pouring out petrol is obviously a negligent way of performing an act within the course of the employment. The decision in *Williams* v. *Jones* was distinguished on the ground that the making of a signboard was not in itself a dangerous act requiring the exercise of any precautions.

A master is not liable (in the absence of express authority or ratification) for an act of his servant where he himself has no power to do the act in question, e.g., a porter made an arrest in a case where the railway company had no power to arrest: *Ormiston* v. *G.W.R. Co.* [1917] 1 K.B. 598.

An employer is not, as a general rule, liable for the torts of an independent contractor. There are, however, exceptions, but they are somewhat obscure, viz.:—

(1) If the employer owes a duty of care, he is not necessarily relieved by delegation: *Robinson* v. *Beaconsfield R.C.* [1911] 2 Ch. 188.

(2) If the employer is subject to absolute liability in respect of the particular act, he is liable if the act is done by his agent: *Groves* v. *Wimborne* [1898] 2 Q.B. 402; *Black* v. *Christchurch Finance Co.* [1894] A.C. 48.

(3) In cases outside (1) and (2), considerations of public policy may impose liability notwithstanding delegation: *Penney* v. *Wimbledon U.C.* [1899] 2 Q.B. 72; *Holliday* v. *National Telephone Co.* [1899] 2 Q.B. 392.

At common law, partners were liable for each other's torts committed in the ordinary course of the partnership business. This is now statutory by s. 10 of the Partnership Act, 1890.

Where a principal is liable for his agent's torts, the principal and agent are jointly and severally liable; and similarly, in the case of partners: see s. 12 of the Act of 1890.

While it is clear that the maxim—*Qui facit per alium facit per se*—cannot be applied literally, yet, it seems equally clear that the courts have been disposed to extend rather than to limit the employer's liability for acts done by an independent contractor.

Officially Dead.

In a somewhat curious case lately reported from Walsall, the defendant, charged with breaking a window, stated that he did so while smarting under an overwhelming sense of grievance. According to his story, his only brother had died intestate a few years ago, and his small estate was administered in the local county court. The defendant, the only near relative, could not be found, and, after the usual advertisements for him, the judge gave leave to the parties concerned to presume his death before that of the intestate, whereupon the estate was divided between thirteen cousins. Recently, when he came back again and went to the county court to claim the money, he was informed that, since he had failed to come in answer to the advertisements, he had lost his chance. He then apparently invited a fairly prosperous cousin to refund and, the answer being in the negative, proceeded to break his window. The justices' clerk was reported to have raised a doubt as to whether one officially dead can commit a crime, but it could hardly have been a serious one, and the delinquent was fined accordingly. His position is perhaps of some legal interest. In certain countries, one whose death is officially registered is not allowed to adduce the mere fact that he is behaving as if he were alive in contradiction of State records, but England is not one of them, and a judge, once satisfied of identity, will accept a witness's oath that he continues to exist, or rather, he would treat the supposedly dead man as an exhibit to the witness swearing to identity, and assume he was alive by the evidence of his own senses. The question would then arise as to his rights to the money, due to him but paid elsewhere in mistake of fact, namely that of his survival. If the money had been standing to a High Court credit, the cases of *Marsh* v. *Joseph* [1897] 1 Ch. 213, and *Re Williams* [1910] 2 Ch. 481, indicate the position in respect of the liability of the consolidated fund for repayment of any sum paid out to the wrong person. From the latter case it appears that a payment made by *bonâ fide* mistake of the court, and without any deception by fraud or forgery, is final as against the proper claimant, but Swinfen Eady, J., left the question as to his rights against the payees open. *Re Robinson* [1911] 1 Ch. 502 is authority that persons paid in mistake by a trustee or executor can plead the Statute of Limitations to a claim on them made by the one properly entitled. *Aspey* v. *Jones* (1884), 54 L.J. Q.B. 98, deals with the position arising on a mistaken order of a county court judge to pay out money paid into court, the persons acting on the order all being protected by statute. In administering a trust both a High Court judge under Ord. 55, r. 35 (*a*), of the Rules of the Supreme Court, and a county court judge under Ord. 3, r. 31, of the county court rules, can bind a person on whom service of notice of a judgment or order for accounts and enquiries is dispensed with. This would no doubt bind those who were not parties because of a representation order having been made, but how far it could or ought to extinguish the interest of a party not represented and not before the court does not appear to have been tested. In the absence of such an order, *Re Dangar's Trusts* (1889), 41 C.D. 178, may be cited as authority for the proposition that the person to whom payment of a sum in court should have been made can sue the actual payee as for money had and received, if, as in *Re Robinson*, *supra*, the defence under the Statute of Limitations is not available. The rule allowing a court to presume the death of a party interested in certain circumstances is, of course, one of convenience, and does not, like the sentence of the Mikado in the play, make the person concerned a dead man for all intents and purposes whatsoever.

Company Law and Practice.

CXXXVII.

SHARES AND STOCK.

In every direction we see to-day a searching after economy by those responsible for the control of trading companies; and, no doubt, so far as many of such companies are concerned, the search begins and ends with the organisation of the company so far as it concerns the ordinary trading activities of the company; but there may be cases in which the organisation of the company as a company may be modified so as to effect economies. That statement is not, perhaps, as clear as it might be, but it is not easy to express, otherwise than by way of illustration, what I wish to express. The Companies Act imposes obligations on companies registered under it, some of which may tend in some circumstances to be burdensome, and, perhaps, expensive to carry out, so that if there is any legitimate means by which these obligations, or any of them, can be avoided, there will be a consequent saving in expense. The particular obligation which I have in mind at the moment is s. 62 (2), which provides that each share in a company having a share capital shall be distinguished by its appropriate number.

The numbering of shares has been considered on more than one occasion by committees charged with the task of considering what amendments were necessary or desirable in the law relating to companies, but the abolition of the necessity of numbering has never been recommended, it appearing from the report of the Wrenbury Committee that the committee of the Stock Exchange and some of the banks (though not all) at that time (1918) wished to have numbering retained. The Wrenbury Committee stated that as regards fully-paid shares

—or even as regards partly-paid shares—it was not satisfied that distinguishing numbers were essential for any useful purpose. But it was not prepared to recommend their abandonment, nor was the Greene Committee. Indeed, the numbering has definite advantages—it avoids confusion (I am careful not to say complication) and it renders it almost impossible for share certificates to be issued representing more shares than the capital of the company actually consists of. On the other hand, it has at least one definite disadvantage, and one which at the present time is felt to be a serious one, and that is the time and labour, and therefore money, spent in complying with the law on the subject. So far as the average private company is concerned, the point is of little moment, for the dealings in the shares are not very frequent, and, as a rule, any transfer does represent a substantial block of shares which, when transferred, is likely to remain in the hands of the new owner for some time. In smaller companies which are not private companies, the labour lost in connexion with transfers of shares is not large, but, where you have a large and important public company, with a considerable issued share capital, dealings in which on the Stock Exchanges are continuously taking place, the registration of transfers and the issuing of fresh certificates, when taken in conjunction with the necessity of keeping books in which each share can be traced by its individual number, places a considerable burden on the company.

What is the solution? The present-day tendency is to convert shares into stock, so that, in place of numbers of shares, you have blocks of stock to be transferred. It is not really so very long ago since shares were, as a general average, of much higher denominations than they are to-day—£100 or £10 was a not unusual nominal value for a share—but now shares of such large amounts are very much the exception. The usual practice is to have £1 shares, and, though a few years ago the 1s. share, especially among deferred shares, was becoming popular, this lower denomination does not seem to have found much favour, though there is the further consideration that recently the number of fresh issues of capital has not been such as to give much opportunity of judging. The result of this tendency to have shares of smaller denomination, which shows, amongst other things, that an increasingly wide circle of persons are the investors of the present day, is undoubtedly to create more work of the nature referred to, a position which could not be satisfactorily met by consolidating shares into ones of larger amount.

It is, of course, obvious that the vast majority of sales and purchases of shares are not of single shares of £1 each, and probably one could say that it would be somewhat of a rarity that shares to a total nominal value of less than £10 should be sold. But even taking a nominal value of £10 as the lowest common multiple, the consolidation into shares of £10 each does not solve the problem. In the first place there is the practical difficulty always met with in connection with consolidation, that of what to do with the persons who hold broken amounts. Thus, to take a simple illustration, one might be consolidating 10s. shares into pound shares. What about the man who has three 10s. shares? You may provide for the issue to him of a fractional certificate in respect of his odd 10s. share, but he will not like it, for its value is uncertain. I think I am right in saying that he will be able to do nothing with it on any Stock Exchange, and if he wants to realise it he will have to find another person placed in a situation similar to his own before he can do so. It may be provided that the odd shares shall vest in some person upon trust to sell them and hold the proceeds of sale in trust for the appropriate shareholders—but it may be some time before they get their money, and it may involve the placing on the market of large blocks of shares, or at any rate the dissemination of the knowledge that there are large blocks waiting to be so placed.

But assume that the practical difficulties of consolidation do not, in any particular case arise, or, having arisen, the methods of surmounting them are satisfactory: if we take the case of the £10 basis, there might still be the person who felt he ought to be able to get rid of £75 in nominal amount of shares. The company must, fortunately or not, consider in a case of this sort its shareholders or potential shareholders, for something does depend on their goodwill. Convert the shares to stock, and this difficulty is surmounted, for the stockholder can transfer any fraction of his stock, subject, of course, to any of the regulations of the company binding on him. It is the almost invariable practice for the articles to prohibit the transfer of stock in amounts less than a certain minimum, quite frequently £1; and Art. 31 of Table A of 1929 provides that the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum must not exceed the nominal amount of the shares from which the stock arose. There may be more than a mere suspicion of tautology about that article, but its meaning is plain.

To return now to the original, and most serious, objection to having the capital of the company in shares, that of the necessity for giving each share a number—the Act contains no provision requiring the numbering of stock (s. 62 (2) above referred to being inapplicable, because the definition of "share" in s. 380 says that it includes stock except where a distinction between stock and shares is expressed or implied, as it must be in s. 62 (2)), so that once the conversion has been effected the tracing through of numbers of shares becomes unnecessary. One cannot help feeling that it still remains to be seen whether the investing public will take as kindly to stock as it does to shares—stock, of course, is always before it in various forms, but, so far as industrials are concerned, the public is more used to shares, and it would be idle to deny that the investing public is, in some ways, thoroughly conservative. A share seems to be a less mysterious thing than stock, and therefore a better investment, but familiarity will doubtless soon destroy any possible feelings of this nature.

I do not propose here to deal with the conversion of shares into stock—I have already done so in this column some little time ago, but I think it would not be amiss that I should very briefly indicate some of the chief points which arise for consideration. It is s. 50 (1) (*c*), which allows a company, if so authorised by its articles, to convert its shares into stock, but they must be fully paid up shares—so that, in the case of a company the shares in which are not fully paid up, no advantage can be taken of the powers of conversion. Another point which has to be remembered is that it is not possible to make an original issue of stock—shares must be issued and fully paid up before they can be converted to stock: see *Home & Foreign Investment & Agency Co. Ltd.* [1912], 1 Ch. 72. Conversion into stock is not an operation of absolute finality, for stock can always be reconverted to shares; but in either case notice must be given to the registrar of companies within one month after the operation (s. 51).

(*To be continued.*)

A Conveyancer's Diary.

Maintenance of Infants—Contingent Legacies.

The question of the maintenance of infants out of the income of contingent legacies was recently before the court upon a point which was generally thought to have been settled but, as it appears, was not entirely so.

The general rule is that a contingent legacy does not carry interest until the contingency upon which it is payable happens. There is an exception to that rule where the legacy is to an infant and the testator is a parent of, or *in loco parentis* to, the legatee. In that case the legacy will carry interest if the testator has not made any other provision for the maintenance of the

legatee. There is a further exception that, where the legacy is to a stranger who is an infant, if a general intention to provide for the maintenance of the legatee is contained in the will, the legacy will carry interest unless some other provision for maintenance has been made by the testator.

The case to which I have referred is *Re Jones; Meacock* v. *Jones* [1932] 1 Ch. 642, and the question was with regard to maintenance where a legacy is given upon the infant attaining some age greater than twenty-one.

In that case a father bequeathed legacies to his infant children "if and when each of them attains the age of twenty-five years."

It was contended that maintenance could not be allowed out of the income of the legacies, because the contingency was not the attainment of twenty-one or marriage under that age. It was said that the question had been definitely decided against the allowance of maintenance (as indeed I was under the impression that it had) by Eve, J., in *Re Abrahams* [1911] 1 Ch. 108. It seems, however, that the decision did not go so far.

In that case, as in *Re Jones*, legacies were bequeathed to children contingently upon their attaining the age of twenty-five. Eve, J., in his judgment stated the general rule and the exception to it when the testator was a parent of, or *in loco parentis* to, the legatee, and pointed out that the exception had its origin in the presumed intention of the testator to provide maintenance, an intention which might well be presumed where the suspensory period was limited to the years when the infant would, in the ordinary course, require to be maintained, but not where the contingency had no reference to the infancy of the legatee, and he said "in this connexion it certainly is remarkable that in all the cases to which my attention has been directed the contingencies have been the attainment by the child of full age or marriage under that age. There is no case in which I can see that the exception has been held to apply where the contingency is anything but the attainment of full age or marriage under that age. In that state of things, and bearing in mind that I am dealing with an exception engrafted on a general rule, ought I to be the first judge to hold that the exception extends so as to include contingencies of every description, and having no relation to the attainment of full age? I do think I ought to be. I think I ought to treat the exception as limited to those cases in which the contingency is the attaining of full age or previous marriage, and to hold that where the testator has made the legacy payable upon a contingency which has no reference whatever to the attainment of full age, the case ought to be treated as governed by the general rule and not as coming within the exception."

That seems to be clear enough and to preclude the allowance of maintenance out of the income of a legacy given contingently upon the legatee attaining twenty-five unless interest in the meantime is given as well.

In *Re Jones*, however, Farwell, J., decided that if in such a case an intention could be gathered from the will that the legatee was to be maintained, then maintenance may be allowed unless other provision is made for it.

Upon the facts of that case his lordship came to the conclusion that there was a clear intention shown in the will that the children were to be maintained. The testator had directed his trustees, if they thought fit, to provide a home for the children until they should attain twenty-five without making any provision for the upkeep of the home unless it could be done out of the income of the legacies. And the learned judge considered that to be a strong indication in favour of an intention that the legatees should be maintained until they arrived at the stated age. As, however, some other provision was made for the maintenance of the sons, it was only the daughters for whose benefit maintenance was directed out of the income of the legacies.

I may remind the reader that maintenance could not have been allowed under s. 31 of the T.A., 1925, unless there was power to allow it independently of that section. That is the effect of sub-s. (3), which reads:—

> "This section applies in the case of a contingent interest only if the limitation or trust carries the intermediate income of the property, but it applies to a future or contingent legacy by the parent of, or a person standing *in loco parentis* to, the legatee, if and for such period as, under the general law, the legacy carries interest for the maintenance of the legatee and in any such case as last aforesaid this rate of interest shall (if the income available is sufficient and subject to any rules of court to the contrary) be five pounds per centum per annum."

Once, however, it is decided in such a case that the infant is entitled, under the general law, to maintenance out of the income of the contingent legacy, sub-s. (1) (ii) will apply, and as soon as the legatee reaches twenty-one he will be entitled to be paid the income until he attains a vested interest or dies or until failure of his interest.

Power of Donee to Appoint to Anyone other than Himself.

It is always interesting to note a case upon a point which has not hitherto been decided.

Such a case is *Re Park; Public Trustee* v. *Armstrong* [1932] 1 Ch. 581.

A testator appointed the Public Trustee his sole executor and trustee, and directed his trustee to hold his residuary estate in trust to pay the annual income to arise therefrom to such person (other than herself) or persons or charitable institution or institutions and in such shares and proportions as his sister should from time to time during her lifetime direct in writing, and from and after her decease, in trust as to both capital and income for the Imperial Merchant Service Guild for the benefit of their stress fund absolutely.

The question was whether the power was valid.

One would have thought that the precise point whether a power to a donee to appoint to anyone but himself was valid would have been the subject of judicial decision, but it seems not to have been so.

It was contended against the validity of the power that, in effect, the testator was leaving it to someone else to make his will for him, which he could not do.

Upon that point a dictum of Lord Haldane in *A.-G.* v. *National Provincial Bank* [1924], A.C. 262, was relied on. His lordship said: "A man cannot disinherit his heirs by giving away his property unless he really gives it away; he cannot leave it to someone else to make a will for him, nor can he leave it to his trustees to give it for purposes which are completely in their discretion unless those purposes are so indicated as in some sense to confer on a class of beneficiary an interest."

As Clauson, J., pointed out in his judgment, Lord Haldane was obviously not intending to question that a testator might confer on any person a power to appoint to whomsoever such person pleased (a general power) and also might confer on any person a power to appoint with a restriction—namely, that the appointees were to be among certain objects designated in the will (a particular power).

Then it was said that this was not a general power, because the donee could not exercise it in her own favour, nor was it a particular power for no objects were designated in the will.

That contention, as the learned judge said, overlooked the fact that the division of powers into general and particular powers was not exhaustive, and that there is a third class of powers where the donee can appoint to anyone with certain exceptions, e.g., with the exception of certain named persons or classes of persons.

In *Platt* v. *Routh* (1840), 6 M. & W. 759, affirmed in the House of Lords *sub. nom. Drake* v. *A.-G.*, 10 Cl. & F. 257, there was a power to appoint between any but certain named

persons. The question was as to the liability to legacy duty, but the validity of the power was recognised. In *Re Byron* [1891], 3 Ch. 474, a similar power was assumed to be valid, and it was there decided that such a power was not a power "to appoint in any manner he may think proper" within s. 27 of the Wills Act, 1837.

Clauson, J., accordingly held that the power in *Re Park* was valid. His lordship said: "I know of no authority to justify me in holding that a power to A.B. to appoint to any object except himself is invalid, while a power to A.B. to appoint to any object except X.Y. is valid."

This case is, as I have said, of interest, because the exact point has not been decided before. It also again calls attention to the inaccuracy of the common classification of powers into general and special (or particular) powers. The distinction between powers which are "general" and those which are not may often have to be considered in relation to the liability to estate duty—in that connexion see the definition in s. 22 of the Finance Act, 1894. Moreover, the point not infrequently arises with regard to the validity of appointments under the Perpetuity Rule.

Landlord and Tenant Notebook.

When is Distress Completed?

The levying of distress involves the taking of various successive steps, and on the question whether the levy is complete or not may depend other important questions, relating to illegal distress, pound-breach, and the like. In practice it will be found that when the question presents difficulties, this is due to the fact that some authorities distinguish between seizure and impounding, and others appear to recognise no such distinction.

And this in turn is partly due to the fact that the practice of impounding on the premises, now the usual thing, is a practice which required the sanction of a statute; the Distress for Rent Act, 1737, s. 10, created the right.

In the *Six Carpenters' Case* (1610), 8 Coke 146*a*, we find the following: "tender after the distress, and before the impounding, makes the detainer, and not the taking, wrongful." I quote this to show that at that time, at all events, distress could be said to be complete without any impounding having taken place.

Some cases decided after the Distress for Rent Act appear to proceed on the footing that impounding was necessary, though it might be practically synonymous with seizure. *Firth* v. *Purvis* (1793), 5 T.R. 432, was an action for treble damages for pound-breach. An hour after "the distress," says the report, the defendants, who were creditors of the tenant, tendered the rent, which the plaintiff refused; they then removed the goods distrained, which consisted of casks of beer, still on the premises. It was held that there had been an impounding as well as a distress. In *Swann* v. *Earl of Falmouth* (1828), 8 B. & C. 456, the tenant sued for excessive distress. It appeared that the defendant's steward had walked round the premises, a wharf, and sent him a written notice distraining upon various goods far exceeding in value the rent due, but had left no one in possession. Bayley, J., held that the goods had been "seized" and impounded, by virtue of the statute, and not abandoned. These decisions were applied in *Thomas* v. *Harries* (1840), 1 M. & G. 695, a replevin action, in which the procedure had been as follows: the bailiff put his hand on a bullock, then made an inventory, and delivered a list of goods to the plaintiff's wife. The following morning a notice was sent, stating that the goods were impounded on the premises. In the evening a tender was made and refused. It was held that this was too late to make the distress illegal; in considering when the impounding had taken place, effect must be given to the words "or otherwise secure," which follow the word "impound," in s. 10, and enlarge it; thus, an enclosed place would no longer be necessary, and when the notice was delivered, impounding was thereby constituted.

Mistakes on the landlord's part led to the proceedings in *Hutchins* v. *Scott* (1837), 2 M. & W. 809, and *Spice* v. *Webb* (1838), 2 Jur. 943. In the one the broker demanded more than was due; he took no goods and made no inventory, but the plaintiff paid the demand, including costs, and sued for excessive distress. Abinger, C.B., said: "The defendant, by his broker, appears there and says: 'Unless you pay me £21 for rent, and three guineas for expenses, I shall take your goods.' It does not lie in the defendant's mouth to say there was no distress." Perhaps the decision turns rather on estoppel than on the question at what stage distress can be said to be complete. For in *Spice* v. *Webb* the mistake was discovered while an inventory was being made, and the broker then left. It was held that there had been an intention to distrain, but that it had never been carried out. The report is not very full, but having regard to the other decisions it looks as if the bailiff were one of those people who make the inventory first and seize afterwards, and that there was a finding of fact that the making of the inventory was merely preliminary. It is, of course, equally possible to seize, and impound, before making the inventory.

But regard must be paid to certain other decisions, on "constructive seizure," of which *Wood* v. *Nunn* (1828), 5 Bing. 10, is the leading authority. The plaintiff sued in trover for a lathe. He had had a dispute as to its ownership with a tenant of the defendant, who then entered the premises and said: "I will not suffer this or any of the things to go off the premises till my rent is paid." The plaintiff got the lathe away, but the defendant got it back, and then sent the bailiff in. It was held that from the time when the defendant had spoken, the lathe was *in custodia legis*. The facts in *Cramer and Co. Ltd.* v. *Mott* (1870), L.R. 5 Q.B. 357, were somewhat similar; the landlord's wife refused to allow a piano hired by the tenant to be removed, and though she was not actually on the premises (a room), but in the passage outside when she spoke, it was held that there was a good constructive seizure. While in *Werth* v. *London and Westminster Loan Co.* (1889), 5 T.L.R. 320, proceedings were successfully brought by a landlord against the grantees of a bill of sale, on the strength of a letter claiming the goods for rent, delivered before their removal, and a protest at the time of the removal. The Divisional Court held that these two acts constituted a distress, but whether the one amounted to constructive seizure and the other to impounding is not stated. But these cases certainly suggest that it would be difficult nowadays to tender between seizure and impounding, and that any intimation that the goods have been seized completes distress, not only as between landlord and tenant, but also as regards third parties.

Our County Court Letter.

THE CONSTITUENTS OF FRAUDULENT PREFERENCE

In the recent case of *In re Dunning; Airey* v. *Thomas*, at Liverpool County Court, the trustee in bankruptcy claimed £375 from the bankrupt's brother-in-law, who had been paid that amount three days before the meeting of creditors. The business was that of a wholesale butcher, of which the first owner had been the bankrupt's brother (who failed with liabilities of £8,000); the second owner had been the bankrupt's father (who failed with liabilities of £1,120); and the third owner was the bankrupt, who (after fifteen months) had incurred unsecured liabilities of £1,724. Having begun without capital, the bankrupt had borrowed £840 from the respondent, free of interest, but had employed the respondent's daughter at a salary of £4 a week. There had also been partial repayments of the loan, and the above amount claimed had been

paid out of a sum of £384, received by the debtor on the eve of his bankruptcy. The respondent denied that the payment was preferential, as he had only advanced the money on condition that it should be repaid on demand. His Honour Judge Dowdall, K.C., observed that this circumstance did not entitle the debtor to discharge a moral obligation to a friend to the detriment of his other creditors. Judgment was, therefore, given for the applicant, with costs, this decision being in accordance with *In re Blackburn* [1899] 2 Ch. 725. For prior references under the above title, see the "County Court Letter" in our issue of the 19th September, 1931 (75 Sol. J. 626).

LANDLORD'S LIABILITY FOR DETINUE.

In the recent case of *Moylan and Another* v. *Clarke*, at Poole County Court, the claim was for £32 15s. as damages for detinue against a landlord, who had joined as third parties a firm of auctioneers (their bailiffs having levied the distress), but it was held that this joinder was misconceived. The first plaintiff's case was that (after distress and seizure) she had paid £47 (to cover rent and expenses) on condition that the goods were returned, but certain articles owned by herself and her kennel maid (the second plaintiff) had been detained. The plaintiff admitted, however, that she had no evidence that the defendant had ratified the detention (if any) of the goods, and it was submitted that there was no case to answer. His Honour Judge Hyslop Maxwell held that the wrong person had been sued, and judgment was therefore given for the defendant, whose costs were ordered to be paid by the plaintiffs, but the defendant was ordered to pay the third parties' costs.

This decision was in accordance with *Becker* v. *Riebold and Others* (1913), 30 T.L.R. 142, where it was held that a landlord only ratifies the action of the bailiff (so as to be liable to the tenant in damages) if (*a*) the distress was in fact wrongful, and (*b*) the landlord retained the proceeds after knowledge of the allegation of illegal distress. The third party procedure, however, is inappropriate to such cases, as it is only available where there is a claim to contribution or indemnity, which does not exist as between tortfeasors.

COUNTY COURT SITTINGS FOR JULY, 1932.

In the County Court Calendar for July appearing in the issue of the 25th June, the sittings on Circuit 36 were incorrectly stated. The complete list of sittings should be as follows:—

Circuit 36.—Berkshire, etc. His Honour Judge Randolph, K.C.—

*Aylesbury, 1, 26 (R.B.).
Buckingham, 29.
Chipping Norton, 13 (R.).
Henley-on-Thames, 27.
High Wycombe.
*Oxford, 11, 25 (R.B.).
Reading, 7 (R.B.), 21, 22.
Shipston-on-Stour, 19.
Thame, 28.
Wallingford, 18.
Wantage.
*Windsor, 25.
Witney, 20.

In Lighter Vein.

The Week's Anniversary.

Lord Justice Giffard, who died on the 13th July, 1870, was the fourth member of the Court of Appeal for whom the bell of Lincoln's Inn had tolled in less than four years, Knight Bruce, Turner and Selwyn, L.JJ., having followed one another to the grave in tragically swift succession. Giffard's judicial career was extremely short. Appointed Vice-Chancellor in 1868, he was raised to the Court of Appeal in the same year. Politics had no part in his promotion, for he was a decided Liberal, while the Government then in power was Conservative. "The whole profession," said Lord Justice James, "recognised in his appointments the just rewards of pure professional merits." No mere lawyer, he possessed a refined and cultivated taste besides considerable learning in many departments of knowledge.

An Old Bristol Custom.

Avory and Charles, JJ., were probably not overmuch perturbed by the jeers which greeted them at the opening of the Bristol Assizes, for before now that great city has been liable to outbreaks of popular turbulence. It is just over a century ago since Sir Charles Wetherall, making his entry there as Recorder, was given a much more alarming reception. *The Times* reported that "he was furiously assailed by the lower orders with missiles as well as with yells and hooting. We are happy, however, to add that the honourable and learned gentleman has sustained no personal injury." Sartorial slovenliness was one of Wetherall's most marked characteristics and it is said that, during the great Bristol riots, he escaped the fury of the mob in the disguise of a clean shirt and a pair of braces.

Doubts and Consultations.

During the Bristol Assizes, Mr. Justice Charles left the Crown Court to seek the advice of Mr. Justice Avory in the Civil Court as to an objection raised at the trial of certain prisoners. The incident recalls another in which the senior judge is said to have been concerned while at the Bar. According to the version I have heard, Lord Darling, then newly raised to the Bench, was presiding at a trial in which Mr. Horace Avory, as prosecuting counsel, called a sturdily stolid British workman. The examination began: "I believe your name is William Robinson?" "Yus." "And you live at 14 Wembey Cottages, Hornsey?" "Yus." "Did you meet the prisoner on the night of the 12th February in Hornsey Lane?" "Yus." "What did he say to you?" To this question, the prisoner's counsel objected, and a lengthy argument ensued, Lord Darling finally adjourning for ten minutes to consult Channell, J., in another court as the point was of importance. On his return he said: "As I anticipated, my brother Channell is of the same opinion as myself and in the special circumstances of the case I shall allow the question to be put." Mr. Avory at once returned to the charge. "Now William Robinson, you say you live at 14 Wembey Cottages, Hornsey?" "Yus." "And you met the prisoner on the night of the 12th February in Hornsey Lane?" "Yus." "*What did he say to you?*" "Nuffin." Kennedy, J., once travelled all the way from Northampton to London to consult the Lord Chief Justice on a difficult point.

A French Play.

The London presentation of "*La Troisième Chambre*" (or "Court No. 3") enabled English lawyers to assimilate a good deal of the atmosphere of a French barrister's chambers. The audience received a general invitation to come behind the curtain during the interval and duly seized the opportunity of getting a close-up view of the pecularities of the legal volumes and the briefs on the desk of Maître Bernier. An imaginary invention enabling barristers in their chambers to listen in to proceedings in court provided one of the situations in the play—an ingenious idea which would save the precious hours wasted while you wait for the case before yours to run down. Such a machine would have saved from laryngitis that conscientious junior whom Sir Richard Bethell once told to keep a case going while he was away. Three days' later, having forgotten all about it, he happened to be passing the court and found the junior, faint indeed, but still keeping the case going.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Cinema—Approval of Plans.

Q. 2513. Plans of a new cinema were submitted to a local authority prior to the commencement of building. Certain members of the council wished to go into the question of the efficiency of the sanitary accommodation. The town clerk advises them that in approving the plans of the new building to be erected that they have no power to approve or otherwise the sanitary accommodation nor to consider the same nor make any reference or recommendations in regard thereto and that the only power the local authority have is to see that existing lavatories comply with the local bye-laws. Is this correct?

A. We know of no ground for challenging the correctness of the advice given by the town clerk. It may be that when a licence to exhibit films and a music licence (if required) are applied for the licensing authority may go into the question. The terms and conditions that may be imposed on a cinematograph licence are not limited to conditions for securing safety: *R.* v. *L.C.C., ex parte London and Provincial Theatres* [1915] 2 K.B. 466. So, on application for a music licence, the suitability of the whole premises may be considered.

Dogs Worrying Sheep.

Q. 2514. We act for a farmer who has sustained serious damage to his sheep by reason of their being worried by two dogs belonging to different parties. Presumably the dogs are joint tort feasors. Ought the proceedings to be issued for the total amount, joining the owners of the two dogs as defendants, and will they both be responsible to the plaintiff for the whole of the damages sustained by the farmer by reason of the worrying of the two dogs; or must the farmer satisfy the court as to the amount of damage he has sustained by reason of the worrying of each particular dog? The farmer can prove that this loss flows from the worrying by these two dogs, but it would be almost impossible to apportion responsibility as between the two.

A. The proper course, assuming that both dogs were working together, would be to sue both owners jointly for the full amount. An exact precedent will be found in the case of *Arneil* v. *Paterson* reported 27th June, 1931 (75 Sol. J. 424), where the House of Lords dealt with a case exactly on all fours with this.

Right of Rector's Widow to Remove Plants from Rectory Garden.

Q. 2515. A question has arisen with regard to the right of the widow of a clergyman who has recently died to remove trees, shrubs and plants planted in the garden of a rectory by her husband, when she and her family quit the rectory house. It is presumed that trees of a permanent nature are not removable, but that there would be no objection to removing plants and vegetables recently planted by the deceased rector, subject to the consent of the new incumbent when appointed.

A. The position here would be that, upon the death of the rector, sequestrators (probably the churchwardens) would be appointed to receive the income and generally guard the property of the living pending the appointment of a new rector. The right to remove plants and vegetables is undoubted; but trees and shrubs, which go beyond what is broadly understood as "herbaceous," ought not, we think, to be removed without the knowledge and authority of the sequestrators and/or of the incoming rector. The position is practically the same as in the case of any other house or garden, save that upon the death of anincumbent his tenancy rights automatically cease.

Notice to Quit De-licenced Premises.

Q. 2516. A owns a public-house let to B on a yearly tenancy, subject to three months' notice at any time, and B also leases from A certain stabling and buildings in the yard of the said public-house, also on a yearly tenancy and subject to the same notice. The public-house may be presumed to be covered by the Rent Restriction Acts. Last year the renewal of the licence was objected to by the local justices on the grounds of redundancy and the house was closed as licensed premises at the end of last year. Before the end of last year A gave B notice to quit, describing the premises as "The public-house and premises known as 'The . . . Inn.'" A intended this notice to include the stabling and buildings in the yard, but did not realise at the time of giving the notice that these were held under a different agreement. The description of the property in the agreement is "All the stabling and other buildings on the east and north sides and one building on the west side of the yard of 'The . . . Inn,'" which shows that these premises are all in the curtilage of the public-house.

(1) Is the word "premises" in the notice to quit sufficient to include the stabling, etc., or should a separate notice to quit have been issued? Neither agreement was referred to in the notice to quit.

(2) As the premises have ceased to be licensed premises, do they come under s. 4 (i) of the Rent Restrictions Act, 1923, the concluding words of which are "or the renewal of the licence has for any reason been refused"?

It has been suggested to me that this means any reason similar to the preceding ones ("*ejusdem generis*"), but the wording of the section as a whole, and this portion in particular, is very comprehensive.

(1) *A.* A general description of the property is sufficient, as laid down in *Doe* v. *Forwood* (1842), 3 Q.B. 627, and, in view of the description in the agreement, the opinion is given that the notice to quit included the stabling as well as the public-house. A separate notice is therefore unnecessary.

(2) The words quoted from s. 4 (i) should be read with the final words of the section, viz., "and in any such case as aforesaid the court considers it reasonable to make such an order or give such judgment." If, in spite of the tenant having been deprived of the means of earning his living on the premises, he still wishes to remain, the opinion is given that the court would incline in favour of the *ejusdem generis* rule. An order for possession would therefore not be made, as the refusal of the licence was due to no fault of the tenant's. The burden of rent, however, will probably cause the tenant to sub-let all except his own actual living rooms, and an order for possession of the parts sub-let will then be obtainable under *Fordree* v. *Barrell* [1931] 2 K.B. 257.

Workmen's Compensation—Commercial Travellers.

Q. 2517. A commercial traveller solicits orders on behalf of several individual merchants, say A, B and C, on a commission basis. He regularly calls upon customers as and when he considers advisable, but is in no way under the orders of any of his principals when he does this, as he only earns remuneration on orders obtained. He reports regularly to each

employer as to orders obtained, accounts outstanding, complaints, and anything connected with orders obtained by him. He calls on X, Y, Z, and whilst actually soliciting orders on behalf of A, B and /or C, meets with an accident and is disabled from following his vocation as a commercial traveller. The commission paid by A does not exceed £200, by B £350, and by C £500 per annum. Will you say whether, in your opinion, on the above facts :—

(1) T is a workman in the employ of A, B and /or C ?

(2) If so, whether he is entitled to claim compensation from A, B and C, or any or either of them ?

(3) Would he be entitled to claim three sums of compensation of £1 10s. each, or one £1 10s. only, paid equally by A, B and C, or by A and B only ?

A. There is no claim against C, as the remuneration impliedly exceeds £350, and the question of whether the traveller is a workman only arises in regard to A and B. The question does not state that there is any written contract, either formal or contained in correspondence, and the terms of the engagement must be inferred from the course of business. There is no control of the movements or hours of work of the traveller, who apparently does not work according to a list of customers supplied by any employer, as his connexion seems to be his own. His travelling expenses are also not the subject of any allowance, being apparently included in his commission. The question does not state whether A, B and C are in the same line of business, but, if so, it is difficult to say that the traveller is an employee of any of them, as no firm would permit one of its own travellers to work for a competitor. If the traveller has reserved his right to obtain orders for other firms, even in the same trade, this is strong evidence that he is an independent contractor. The freedom from control, and also the method of remuneration, lead to the conclusion that the traveller works under contracts for services, and not under any contract of service, and therefore is not a workman within the Act. The first question is therefore answered in the negative and the second and third do not arise.

Housekeeper Allowance.

Q. 2518. A is a single man who is the tenant of a farm, and is, for purposes of income tax, assessed under Sched. B (on his rental). He has an unmarried sister, who acts as his housekeeper. Can he claim the housekeeper's allowance in respect of her ? If so, will you please inform us under what rule or section of the Income Tax Acts this is so, and if any case has been decided on this point. We may point out that a widower, without children, whose case is on all fours with the one above, appears to be entitled to an allowance in respect of a housekeeper, whether a relative or otherwise. We may say that in A's case there is no child or adopted child.

A. The material portion of s. 22 of the Finance Act, 1924, bearing on the point raised reads as follows :—" If the claimant proves that he is a widower and that for the year of assessment a person being a female relative of his or of his deceased wife is resident with him . . . in the capacity of a housekeeper . . . he shall . . . be entitled to a deduction of £60 in respect of that female relative." The only case where an unmarried person can successfully claim relief is covered by s. 20 (*a*) of the Finance Act, 1920, which provides that if " he has living with him either his mother, being a widow or a person living apart from her husband, or some other female relative for the purpose of having charge and care of any brother or sister of his being a child . . . and that he maintains the mother or other relative at his own expense . . . he shall be entitled to a deduction of £45. It will be clear that A is debarred from relief, although a childless widower would be entitled to the allowance. Reference has frequently been made to this anomaly, but, although the amount of relief has been modified by subsequent legislation, the scope of the relief has not been extended.

Reviews.

Silicosis and Asbestosis Compensation Schemes. 1932. By Paul C. Davie, of Lincoln's Inn, Barrister-at-Law. Demy 8vo. pp. viii and (with Index) 176. London, Liverpool and Glasgow : The Solicitors' Law Stationery Society, Limited. 10s. net.

Workers in certain industries, such as metal-grinding, the manufacture of refractories (fire-clay and similar substances, mostly composed of silica) and the crushing of sandstone are particularly liable to chronic damage to the lungs through inhaling the dust given off by these substances. Sufferers are compensated under a number of statutory rules and orders, which affect a very large number of employers and workmen, but are readily accessible only to lawyers. It is, however, necessary for employers to know the law, as non-compliance with it may involve heavy penalties. This book enumerates the various Acts and Orders, and explains the various schemes in force, and is so arranged that the layman can use it with ease. A number of appendices contain extracts from the relevant statutes and the text of the regulations.

Principles of Company Law. By J. Charlesworth, LL.D., of Lincoln's Inn, Barrister-at-Law. 1932. Demy 8vo. pp. xlviii and (with Index) 306. London : Stevens & Sons, Limited ; Sweet & Maxwell, Limited. 7s. 6d. net.

This is intended to be a textbook for students founded upon the learned author's experience as a lecturer on the subject. It deals with companies incorporated under the Companies Act, 1929, and also to which the Companies Clauses Acts apply, beginning with a review of the general nature of a company. The learned author sets out in detail everything relating to the formation of limited companies, the issuing of prospectuses, underwriting, duties of directors, the keeping of accounts, the issuing of debentures, winding up (voluntary and otherwise) and reconstruction. The student of company law will find everything he requires in this volume which is studded throughout with numerous references to all the important cases bearing on the subject.

William Paston, Justice. By Edgar C. Robbins. 1932. Crown 8vo. pp. 55. Norwich and London : Jarrold and Sons, Ltd. 2s. 6d. net.

A perusal of the scattered references to William Paston, the founder of the Paston family, in the celebrated Paston Letters does not give a very complete account of his career, and the author has, therefore, in this well-written and neatly produced little book, given an interesting and coherent sketch of the judge's life and character based on information obtained from various other sources. The volume contains four interesting illustrations, including reproductions of a twenty-fifth century illumination of the Court of Common Pleas and of a contemporary copy of Paston's Testament.

Books Received.

The South African Law Times. Vol. I. No. 5. May. Johannesburg : Hortors Limited. Annual subscription : £1 1s.

The Case Against the English Divorce Law. By Alfred Fellows. 1932. Crown 8vo. pp. xviii and 239. London : John Lane, The Bodley Head, Ltd. 7s. 6d. net.

Underhill's Law of Torts. Twelfth edition. 1932. By Ralph Sutton, M.A., of Lincoln's Inn, Barrister-at-Law. Demy 8vo. pp. lxxvi and (with Index) 361. London : Butterworth & Co. (Publishers) Ltd. 12s. 6d. net.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London and Liverpool.]

Correspondence.

Recovery of Costs.

Sir,—We see the article in your issue of 25th June on this subject, in which it is stated that, as an alternative to commencing an action for recovery of the bill of costs, the solicitor may obtain a reference to tax under s. 37 of the Solicitors Act, 1843, and may, on obtaining the taxing master's certificate, proceed to enforce payment "according to the course of the court" under s. 43 of that Act.

This statement is entirely misconceived, nor is any support whatever given to it by the recent decision of the House of Lords in *Hamilton* v. *Bell*, to which you refer.

A solicitor who attempts to use the procedure of s. 37 as a means of recovering his bill of costs, instead of for its proper purpose of ascertaining the *quantum* of such costs, will certainly, if the attempt comes under the observation of an instructed tribunal, receive as rude an awakening as did the plaintiff solicitor in *King* v. *Kype* (1838), 1 Willmore W. and R. 87, where the court expressed the opinion that it was a fraud to adduce an allocatur as evidence of liability.

There are other decisions to the same effect. *Re Debenham and Walker* [1895] 2 Ch. 430, is a modern decision under s. 43 of the Solicitors Act, 1843, that ordinarily it is useless for a solicitor taxing to rely on the taxing master's certificate as entitling him to enforce payment of the amount certified.

The particulars you give as to *Hamilton* v. *Bell* are not entirely correct and are somewhat misleading. For the present purpose it is sufficient to say that, in *Hamilton* v. *Bell*, the House of Lords were of opinion that, in their view of what occurred before the taxing master, the client-appellant had in fact submitted the questions involving his liability to the taxing master, and that the taxing master had decided them against him. This being so, he could, of course, no longer dispute the question of liability. Therefore, in respect of a submission to the taxing master and its result, his case was similar to that of *Re Lowless* (1848), 17 L.J. C.P. 22.

The House of Lords then proceeded to hold that the court had, in such circumstances, power to make, under s. 43 of the Act, an order for judgment against the client, notwithstanding the absence of any precedent direction to pay, which might appear to have been required upon the wording of s. 43 of the Act.

This somewhat puzzling wording is as follows:—

> "Upon the taxation and settlement of any such bill, the certificate of the officer by whom such bill shall be taxed shall (unless set aside or altered by order, decree or rule of court) be final and conclusive *as to the amount thereof*, and payment of *the amount certified to be due and directed* to be paid may be enforced according to the course of the court in which such reference shall be made; and in case such reference shall be made in any court of common law, it shall be lawful for such court or judge thereof to order judgment to be entered up for *such amount*, with costs, unless the retainer shall be disputed, or to make such other order thereon as such court or judge shall deem proper."

The question was whether the words "such amount" referred to the amount firstly mentioned in the clause or to the amount secondly mentioned—this is merely to an amount certified or to an amount not only certified but also directed to be paid.

We have no copy of the judgment, but our recollection is that their lordships did not give reasons for their decision that a direction to pay was not a condition precedent to an order for judgment.

At any rate, while this decision clears up the point, it does not in the least support the idea that a solicitor can resort to a taxation as an alternative to an action.

We may add that it was no part of the appellant's case (as might be gathered from your article) that the words of the Act gave the taxing master power to give a direction for payment, his case was the direct contrary: *Shaw* v. *Neale* (1858), 6 House of Lords Cases 581 on pp. 599, 602 and 612.

As we have said, we have no copy of the judgment, but we do not recollect that any part of their lordships' decision was to the effect stated in the concluding sentence of your article:—

> "The words gave the taxing master no jurisdiction to order payment of the costs, and accordingly the order for payment must stand since the certificate had been properly made out in accordance with the section."

This argument would appear to contain a "*non sequitur*," for though the certificate may be entirely proper, a proper certificate will not support a judgment, the solicitor taxing must establish the liability of the client by some other means, ordinarily an action.

London, W.C.2. "SUBSCRIBERS."
27th June.

[We are obliged to our subscribers for the above comments on the recent article published in THE SOLICITORS' JOURNAL. It would, of course, have been preferable if we could have had the opportunity of perusing a transcript of the judgment in the case of *Hamilton* v. *Bell*, but we gather that the case is unreported, and we were indebted to a subscriber for the notes thereon.

We are not, however, in agreement with the views expressed above as to the right of a solicitor to have his costs taxed and to obtain an order for judgment for the amount certified to be due. The Solicitors Act, 1843, expressly provides the machinery for such a procedure. The case of *King* v. *Kype* (1838), was decided before s. 43 of the Act was passed, and, notwithstanding the decision of North, J., in the case of *In re Debenham & Walker* [1895] 2 Ch. 430, which was decided on a point of Chancery practice, and which is in fact inconsistent with the Court of Appeal decision in the case of *Re Brockman* [1909] 2 Ch. 170, it seems clear that ss. 37 and 43 provide the solicitor with a means of obtaining judgment for the amount of his costs without the necessity for bringing an action in order to test the question of his client's liability. The Court of Appeal in the case of *Re Brockman*, *supra*, confirmed that s. 43 enables a solicitor to obtain an order for payment of the amount certified to be due in any division, whether the application to tax is made by the client or the solicitor. The client is in no way prejudiced by this procedure and has ample opportunity of raising the question of his liability for the costs on the summons to tax. If, in fact, he disputes the retainer then no order will be made on the summons in the King's Bench Division, and the solicitor will be forced to pursue his remedy by way of action.—ED., *Sol. J.*]

Obituary.

MR. A. A. ARNOLD.

Mr. Augustus Alfred Arnold, retired solicitor, formerly senior partner in the firm now known as Messrs. Arnold, Tuff and Grimwade, of Rochester, Kent, died on Monday, the 13th June, at his home at Cobham, at the age of ninety-seven. He was educated at King's School, Rochester, and was admitted a solicitor in 1856. He was first with Messrs. Batten & Co., of Yeovil, but in 1860 joined the firm of Messrs. Essell, Knight & Arnold, of Rochester, becoming senior partner on the retirement of Mr. Knight. He held many public appointments in the Medway towns and was a Past President of the Kent Law Society, and senior member of the Rochester and District Law Society. He retired in 1905.

MR. H. BRAITHWAITE.

Mr. Henry Braithwaite, solicitor, of Whitehaven, died on Sunday, the 19th June, at his home at Seascale, Bootle,

at the age of sixty-five. He was admitted in 1890, and succeeded the late Mr. E. Atter, of Whitehaven. Mr. Braithwaite had been deputy-coroner for West Cumberland, and was also Clerk to the Commissioners of Income Tax, Allerdale district, and Solicitor to the Hound Trailing Association.

MR. T. W. JONES.

Mr. Thomas William Jones, solicitor, of Llanilid, near Pencoed, died recently, at the age of forty-nine. He was educated at Llandovery College, and having served his articles with Messrs. Gabb & Watford, solicitors, of Abergavenny, he was admitted a solicitor in 1907. For many years he had acted as clerk to the Llanilid Burial Board.

MR. E. A. FFOOKS.

Mr. Edward Archdale Ffooks, J.P., retired solicitor, formerly a member of the firm of Messrs. Ffooks & Grimley, solicitors, of Sherborne and Dorchester, and a Clerk of the Peace for the county, died at Sidmouth, on Thursday, the 23rd June, at the age of seventy-three. He was admitted in 1882, and was a Past President of the Dorsetshire Law Society. He had also been Registrar of the Archdeaconry of Dorset and Sherborne, and Under-Sheriff and Clerk to the Lieutenancy.

Notes of Cases.

House of Lords.

Northumberland Shipping Co. Limited *v.* McCullum.

28th June.

WORKMEN'S COMPENSATION—SEAMAN RETURNING TO SHIP—THROUGH PRIVATE PROPERTY—NIGHT WATCHMAN.

This was an appeal from the Court of Appeal affirming an award of the County Court judge at Glamorgan, who held that a ship's bosun who, when returning to his ship through private dock property, to undertake duty as a night watchman, sustained personal injury resulting in his death, met his death by an accident in the course of his employment.

On 4th October, 1930, the deceased man was due on board at 6 p.m. to take up his duty as night watchman, and shortly before that hour he left his home to go to the harbour. He called in at a public-house just outside the entrance to the dock premises and had a glass of beer and then proceeded on his way. He was never thereafter seen alive and his body was recovered from the dock, but his death was not due to drowning but to fracture of skull and shock, and the question was whether the accident could be said to have arisen out of and in the course of the employment.

Lord MACMILLAN, in the course of his judgment, said that on examination it would be found that in all the cases of a seaman returning from shore leave to his ship in a public harbour the courts had really been trying to find the dividing line between the risks incidental to the seaman's employment from those which he shared with all the public. There had been no case in which that House had decided that a seaman, who on his way to rejoin his ship, met with an accident while traversing private dock premises, was disentitled to compensation. The seaman who on his way back to his ship had left the public highway with its risks common to all wayfarers and had entered the private premises of the harbour in which his ship lay with its special risks to which only those who had business at the harbour were exposed, seemed to him (his lordship) to have come within the protection of the Act, for if he sustained an accident while using that access he sustained it by reason of risks incidental to his employment which he would not have encountered but for his employment. That was exactly the position of McCullum in this case on the facts as found by the arbitrator. He (his lordship) did not think that he was transgressing any principle of the statute which was binding on their lordships. He moved that the appeal be dismissed with costs.

Lords ATKIN, WARRINGTON, TOMLIN and THANKERTON concurred.

COUNSEL: *Sir W. Greaves-Lord*, K.C., *A. T. Herries* and *H. P. Levy*; *Edward Cave*, K.C., and *G. Clark Williams*.

SOLICITORS: *Botterell & Roche*, for *Crawfords*, Swansea; *Alexander Smith* for *Andrew & Thompson*, Swansea.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Court of Appeal.

Hobbs *v.* Australian Press Association.

Lord Hanworth, M.R., Romer, L.J. 22nd June.

PRACTICE—ACTION AGAINST FIRM—PARTNERS RESIDENT ABROAD, BUT WITH BRANCH IN LONDON—SERVICE OUT OF THE JURISDICTION—RIGHT TO SERVE ON PARTNERS IN NAME OF FIRM—APPLICATION FOR SERVICE OUT OF THE JURISDICTION—RULES OF THE SUPREME COURT, Ord. 11, Ord. 48A.

The plaintiff brought an action for libel in respect of a publication in the "Melbourne Argus," a paper printed and published in Melbourne. The defendants were the Australian Press Association, who were in London, and the firm of Wilson and Mackinnon, proprietors of the "Argus," who, as stated in that paper, were a Melbourne firm, but who had a branch office in London. The plaintiff, not knowing of their London branch, applied under Ord. 11 for leave to serve the writ on the firm in Melbourne, which Humphreys, J., granted. After service, the firm applied to Charles, J., to discharge the order made by Humphreys, J., on the grounds that they had a place of business within the jurisdiction, and also that the right given by Ord. 48A, r. 1, to sue two or more partners in a firm's name did not apply to cases of service of a writ abroad under Ord. 11. Charles, J., granted the application. The plaintiff appealed. The court allowed the appeal.

Lord HANWORTH, M.R., said that the defendant firm was contending that there was in fact no inter-relation between Ord. 11 and Ord. 48A, and *Russell* v. *Cambefort*, 23 Q.B.D. 526, was said to establish that. But that case was under the old rule as to service abroad: Ord. 9, r. 6. Also in *Western National Bank of the City of New York* v. *Perez, Triana & Co.* [1891] 1 Q.B. 304, it was held that Ord. 9, r. 6, did not apply in the case of a foreign firm. In *Lysaght Limited* v. *Clarke and Co.* [1891] 1 Q.B. 552, Cave, J., held that there was good service in the case of a firm carrying on business in England of which one or more of the partners were resident abroad. The new rules came later, in June, 1891, and it was important to remember that those rules were framed to enable plaintiffs to obtain their rights, and in the case of *Worcester City and County Banking Company* v. *Firbank Pauling & Co.* [1894] 1 Q.B. 784, Lord Esher intimated that Ord. 48A had been framed with a view of getting rid of a hardship, and the decision showed that there was no contradistinction of the use of Ord. 11 when the procedure offered under Ord. 48A was allowed. The appeal must be allowed and the order of Charles, J., rescinded.

COUNSEL: *P. B. Morle* for appellant; *F. J. Tucker* for respondents.

SOLICITORS: *Edmond O'Connor & Co.* for plaintiff; *Linklaters and Paines* for the defendant firm.

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

Rekstin *v.* Komserveputj Bureau (Bank for Russian Trade Garnishees).

Lord Hanworth, M.R., Slesser and Romer, L.JJ.
23rd and 24th June.

DEBTOR AND CREDITOR—ORDER BY DEBTOR TO HIS BANKER TO TRANSFER CURRENT ACCOUNT—NO ACCEPTANCE OF

Transfer by Transferee—Garnishee Order served on Bank by Creditor—Garnishee Order Operative.

Appeal from a decision of the Divisional Court.

On 2nd September, 1931, the Komserveputj Bureau wrote to the Russian Bank for Foreign Trade a request to transfer their current account, amounting to some £9,000, to the Trade Delegation of the Russian Soviet Union, a body enjoying diplomatic immunity. By about 3 p.m. the bank clerk, after necessary enquiries, had made out the requisite slip recording the transaction and had passed the book entries, but shortly after 3 p.m., before the Trade Delegation had accepted the transfer, or, according to the evidence, were aware that any transfer was proposed, J. E. Rekstin, a judgment creditor of the Bureau, served upon the bank a garnishee order *nisi*, attaching the account. The bank contended that the amount in the current account had passed to the Trade Delegation and that there was no longer a debt to the Bureau, and Master Burnand took the same view. The Divisional Court, Acton and Talbot, JJ., reversed his decision. The bank appealed.

The court dismissed the appeal. Lord Hanworth, M.R., thought that on the authority of *Morrell* v. *Wootten*, 16 B. 197, the mere entries in the bank's books, unconfirmed by any assent of the proposed transferee, were not enough to make an effective transfer, so that there was still a debt by the bank to the Bureau, and, the order to transfer being revocable, the question was whether the garnishee order had revoked it. The case of *Continental Caoutchouc and Gutta Percha Co.* v. *Kleinwort, Sons & Co.*, 90 L.T. 474, suggested that the garnishee order acted as a revocation, and that order therefore operated in favour of the judgment creditor.

Counsel: *Somervell*, K.C., and *Harold Murphy*, for appellants; *Van den Berg*, K.C., and *R. F. Levy*, for respondent (the judgment creditor).

Solicitors: *Wynne-Baxter & Keeble; Warren & Warren.*

[Reported by G. T. Waitfield-Hayes, Esq., Barrister at-Law.]

High Court—Chancery Division.

In re Cockell: Jackson *v.* Attorney-General.

Bennett, J. 3rd May.

Insolvent Estate—Crown's Preferential Claim—Property and Income Tax—Year of Assessment—Form of Order.

The testator herein died insolvent on the 19th June, 1929. Probate of his will was granted on the 2nd August, 1929, and the plaintiff herein was his sole executrix. This summons was for the purpose of determining (*inter alia*) whether the preferential claim of His Majesty could be made for property or income tax assessed for the year ending the 5th April next before the testator's death and no other year or for property or income tax assessed for any one year ending on any 5th April before the testator's death. This question—the second in the summons—arose for determination as a result of the decision of the first question in the summons (76 Sol. J. 146). The following cases were cited: *Gowers* v. *Walker* [1930] 1 Ch. 262 and *In re Campbell; Commercial Bank of Scotland* v. *Campbell*, 10 T.C. 585.

Bennett, J., indicated that he would follow the decision of Eve, J., in the former case. The form of order drawn up was as follows: "This court doth declare that the preferential claim of His Majesty for property or income tax can be made for property or income tax assessed for any one year ending on any 5th April before the testator's death."

Counsel: *Morton*, K.C., and *Wilfrid Hunt; The Attorney-General* (Sir Thomas Inskip, K.C.) and *J. H. Stamp.*

Solicitors: *Keene, Marsland, Bryden & Besant; Solicitor of Inland Revenue.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Motor Union Insurance Co., Ltd. *v.* Mannheimer Versicherungsgesellschaft.

Goddard, J. 10th June.

Marine Insurance—German Insurance Company—Insurance Business in England—Agreement with English Company — Nature of Agreement — Reinsurance.

Appeal by Special Case stated by an arbitrator.

In 1925 the appellants, the Mannheim Insurance Company, a German company, wishing to undertake marine insurance business in the English market, entered into an agreement with the respondents, Motor Union Insurance Company, providing that the Motor Union should issue policies on behalf of the Mannheim Company, but that the policies should be issued in the name of the Motor Union and the business should ostensibly be Motor Union business alone. It was further provided by the agreement that when issuing a policy the Motor Union should be itself liable for half the total sum insured: that was for the purpose of securing the Mannheim Company against the risk of the Motor Union committing the Mannheim Company to undesirable insurances. Policies were issued by the Motor Union in accordance with the agreement, and heavy losses were in fact sustained. The Motor Union, having paid the losses, sought to recover over £40,000 from the Mannheim Company. That company refused to pay and the claim was referred to arbitration. The arbitrator awarded, subject to the opinion of the court on this Special Case, in favour of the Motor Union.

Goddard, J., said that the question was what was the effect in law of such an agreement. Could the agent enforce the implied contract of indemnity in such circumstances? As the name of the Mannheim Company did not appear in the policies issued in pursuance of the agreement they could not have intervened as principals so as to sue the assured for a premium, nor could they have sued for a loss. In either case the absence of a policy subscribed in their name would have been fatal. The material statutes prevented any privity of contract being established between the Mannheim Company and the assured by the action or agency of the Motor Union Company, and the latter, and they only, were the insurers. Any premiums received by the Motor Union were received by them, and any losses paid were paid by them as principals in respect of a liability which was theirs and theirs only. If that were so, any claim they might have against the Mannheim Company was not for indemnity against loss sustained as agents, but was in the nature of a re-insurance: see *English Insurance Co.* v. *National Benefit Assurance Co.* [1929] A.C. 114. He did not think that that case was distinguishable from the present one, and he accordingly held that the claim here was in effect a claim for re-insurance, and so must fail for want of a policy. He therefore pronounced in favour of the Mannheim Company, with costs. A stay of execution was granted.

Counsel: *Miller*, K.C., and *Harry Atkins*, for the appellants; *Stuart Bevan*, K.C., and *Sir Robert Aske*, for the respondents.

Solicitors: *Constant & Constant; Ince, Roscoe, Wilson and Glover.*

[Reported by Charles Clayton, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division

Matthews *v.* Matthews.

Lord Merrivale, P., and Langton, J. 24th May.

Husband and Wife—Maintenance Order on Ground of Wilful Neglect to maintain—Effect of Separation Deed in bar—Covenant by Wife on Receipt of Provision not to claim further Maintenance—Summary Jurisdiction (Married Women) Act, 1895

(58 & 59 Vict. c. 39), s. 4 SUMMARY JURISDICTION (SEPARATION AND MAINTENANCE) ACT, 1925 (15 & 16 Geo. 5, c. 51), s. 1, sub-s. (1).

This was an appeal by the husband from an order of the magistrate sitting at Westminster directing him to pay the wife the sum of 5s. per week upon a finding of wilful neglect to provide reasonable maintenance.

In July, 1931, the parties having separated entered into a deed whereby the husband agreed to establish the wife in business making her an immediate payment of £50 and a further payment of £50 in monthly instalments. The wife agreed that she would not make any claim or demand upon the husband for maintenance or institute any legal proceedings for that purpose, and would at all future times support and maintain herself. The husband made all of the payments provided under the deed. The wife's business subsequently failed and the husband was also in financial difficulty. Before the magistrate the husband set up the deed in bar to the wife's claim for maintenance. The learned magistrate held that the agreement was not in itself a bar if the wife could not support herself, and the husband was in a position to contribute to her support and wilfully neglected to do so, and found that the husband was in a position to make the small contribution ordered.

Lord MERRIVALE, P., in giving judgment, dismissing the appeal, said that although the deed might have excluded a claim at common law, the question for the magistrate to decide was whether the husband had been guilty of wilful neglect to maintain, and for the purposes of that decision the deed was of merely evidentiary value and created no estoppel. It was no bar to the proceedings before the magistrate, to whom it remained open under the statutes to consider all the circumstances of the case, and upon the evidence before him he had arrived at a just conclusion.

LANGTON, J., agreed.

COUNSEL: *Hon. Victor Russell* for the appellant; *T. C. Moore* for the respondent.

SOLICITORS: *H. I. Sydney & Co.; Parfitt, Cresswell and Williams.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

TABLE OF CASES previously reported in current volume.—Part II.

Betts *v.* Receiver for the Metropolitan Police District and Another 474
de Carteret, *In re*: Forster *v.* de Cartaret 474
Davies, *In re*: Lloyds Bank *v.* Mostyn 474

Parliamentary News.

Progress of Bills.

House of Lords.

Bills of Exchange Act (1882) Amendment Bill.
Amendment reported. [6th July.
Birkenhead Corporation Bill.
Read Third Time. [30th June.
Chesterfield and Bolsover Water Bill.
Read Third Time. [5th July.
Extradition Bill.
Read Third Time. [30th June.
Hire Purchase and Small Debt (Scotland) Bill.
Read Third Time. [5th July.
Hove Pier Bill.
Commons Amendments agreed to. [28th June.
Isle of Man Customs (No. 2) Bill.
Read First Time. [4th July.
Kilmarnock Gas Provisional Order (No. 2) Bill.
Read First Time. [6th July.
Leven Burgh Extension Order Confirmation Bill.
Read Third Time. [30th June.
Lindsey County Council (Sandhills) Bill.
Read Third Time. [4th July.
London County Council (Money) Bill.
Read Third Time. [30th June.
Malta Constitution Bill.
Read Third Time. [30th June.
Marriages Provisional Order (No. 2) Bill.
Read Second Time. [6th July.
Ministry of Health Provisional Order (Watford) Bill.
Read Third Time. [6th July.
National Health Insurance and Contributory Pensions Scheme.
In Committee. [5th July.
Newcastle-upon-Tyne Fire Brigade Provisional Order Bill.
Read Second Time. [6th July.
Patents and Designs Bill.
Commons Amendments agreed to. [30th June.
Public Works Loans Bill.
Read First Time. [4th July.
Rights of Way Bill.
Read Third Time. [4th July.
Road Traffic Bill.
Read Third Time. [4th July.
Sea Fisheries Provisional Orders (No. 2) Bill.
Read Third Time. [5th July.
Sunday Entertainments Bill.
In Committee. [6th July.
Town and Country Planning Bill.
Amendments reported. [5th July.
Wokingham District Water Bill.
Read Third Time. [5th July.

House of Commons.

Agricultural Credits (Mortgages) Bill.
Read Third Time. [30th June.
Birkenhead Corporation Bill.
Lords Amendments agreed to. [4th July.
Bournemouth, Poole and Christchurch Electricity Bill.
Reported, with Amendments. [30th June.
British-born Alien Women (Civil Rights) Bill.
Read First Time. [6th July.
British Museum Bill.
Read Third Time. [30th June.
Candidates (Local Government) Election Deposit Bill.
Read First Time. [5th July.
Carriage by Air Bill.
Read Third Time. [30th June.
Chester Corporation Bill.
Lords Amendments agreed to. [6th July.
Children and Young Persons Bill.
Lords Amendments considered. [4th July.
Extradition Bill.
Read Third time. [6th July.
Gas Light and Coke Company Bill.
Read Third Time. [4th July.
Gas Undertakings Bill.
Read Third Time. [4th July.
Gateshead Extension Bill.
Lords Amendments agreed to. [1st July.
Hire Purchase and Small Debt (Scotland) Bill.
Lords Amendments agreed to. [6th July.
Irish Free State (Special Duties) Bill.
Read Second Time. [6th July.
Isle of Man (Customs) (No. 2) Bill.
Read Third Time. [30th June.
Kilmarnock Gas Provisional Order (No. 2) Bill.
Read Third Time. [5th July.
Leven Burgh Extension Order Confirmation Bill.
Read Third Time. [4th July.
Malta Constitution Bill.
Read Second Time. [5th July.
Metropolitan Water Board Bill.
Read Third Time. [6th July.
Mid Southern Utility Bill.
Lords Amendments agreed to. [30th June.
Ministry of Health Provisional Order Confirmation (Hailsham Water) Bill.
Read Third Time. [4th July.
Ministry of Health Provisional Order Confirmation (Henley-on-Thames Water) Bill.
Read Third Time. [4th July.
Ministry of Health Provisional Order Confirmation (Hertford) Bill.
Read Third Time. [1st July.
Ministry of Health Provisional Orders Confirmation (Elham Valley Water and Herts and Essex Water) Bill.
Read Third Time. [4th July.
Nottingham Corporation Bill.
Lords Amendments agreed to. [4th July.
Public Works Facilities Scheme (Shrewsbury Corporation) Bill.
Read Third Time. [5th July.

Public Works Loans Bill.	
Read Third Time.	[30th June.
Rating and Valuation (No. 2) Bill.	
Read Third Time.	[1st July.
Solicitors Bill.	
Read Third Time.	[30th June.
South Metropolitan Gas Bill.	
Read Third Time.	[4th July.
South Suburban Gas Bill.	
Lords Amendments agreed to.	[4th July.
Southern Railway Bill.	
Lords Amendments agreed to.	[30th June.
Trent Navigation Bill.	
Lords Amendments agreed to.	[30th June.
Weston-super-Mare Grand Pier Bill.	
Read Third Time.	[1st July.

The Law Society.

INTERMEDIATE EXAMINATION.

The following Candidates (whose names are in alphabetical order) were successful at the Intermediate Examination held on the 15th and 16th June, 1932. A Candidate is not obliged to take both parts of the Examination at the same time.

First Class.

Joan Barker, Stanley Briggs, John Hindle Fisher, Charles Goodman, Thomas Edward Purchas, B.A. Oxon, Theodore Hertzl Richardson.

Passed.

Basil Arnold, Bernard Frank Baker, Patrick Hamilton Baynes, B.A. Oxon, Henry Edward Vivian Bennett, Gerald Austin Bernhard, John Austin Best, Raymond Cyril Charles Bonniface, Donald Webster Bradley, George Eric Colthorpe, Percival Edward Gott Coode, George Henry Crowe, Patrick Robson Dobbin, Noel Downing, Francis Evelyn Du Pre, John William Alexander Ensor, Cecil Harold Genese, William Richard Philip George, Alan Kirton Guest, Laurence Aylmer Penn Hardy, Norman Percival Hatt, Vivian Gerald Hines, Jessie Marion Holloway-Pike, Reginald Bede Hutchinson, Norman Haygarth Inman, Harold Johnson, Horace Jordan, Philip Charles Fenner Lawton, Benjamin Roy Lewis, Frederick Ronald Lewis-Heath, Ormonde Arthur Logie, John Mills, Jonathan Anthony Musgrave, John Walter Notcutt, John Harold Germain Parsons, Harry Pugh, David Ffinlo Quirk, Brian Voase Rhodes, Bernard Richardson, Charles Edward Rigg, Kenneth Charles Robertson, Frederick John Rooth, John Duprey Schooling, George Alfred Smith, Harold Wilfred Smith, George Soulsby, Elaine Margaret Stannard, Thomas Tivendale, Matthew Myer Trackman, Philip Turner, Arthur Usher, Allan Dodson Vickerman, B.A. Cantab., John Roderick Waite, Stanley Ronald Wakefield, Arthur George William Wash, John Herbert Godfrey Way, David Winston Whitaker, Howard Jones Williams, Leslie Jameson Williams, Thomas Edwin Williamson, Digby Willoughby, George Robert Winter, Anders Meredith Woll, George Henry Wynne, Edwin Sidney Young.

The following Candidates have passed the Legal portion only :—

Michael Baird, B.A. Cantab., John Watling Balmer, B.A. Oxon, Leonard Bamforth, Joseph Harold Bates, Alexander Joseph Birtwell, Gerard Antoine Harvey Bourlay, Michael Percy George Bowman, Phyllis Helena Capern, Joyce Kathleen Chandler, William Edward Gerald Churcher, Charles Leslie Clarke, William Henry Clarke, Reginald John Horby Cleaver, William Kenneth Cooper, Percy Lewis Cox, Thomas Edmund Cremer, Charles William Harold Davenport, Henry Ralph Davies, Hubert Edwin Davies, Alfred John Davis, John Stannard Dod, Gerald Arthur Ealand, Harold Warwick Edwards, Claude Wattsford Willmott Elwell, B.A. Cantab., Samuel Emanuel, Jack Evans, Sydney George Fitness, Norman McDonald Fowler, Peter Edward Wettenhall Gellatly, B.A. Cantab., Mark Asty George, Neville Gill, Sydney Gordon, Clifford Leyland Hagger, Phineas John Hands, Rowland John Hawkins, Kenneth Piers Hickman, Stephen Paull Jewill Hill, James Bruce Hollick, Cecil Jobson, Henry Norman Kenward, Ethel Millicent Kirk, Kenneth William Knights, Geoffrey Gordon Lewis, Kenneth Robert Macfee, Eric Gordon Marshall, Harry Francis Elliott Mathews, Richard Geoffrey Mayo, Richard Major Merry, Robert Fitzhugh Money, Derek Noel Muskett, Charles Alcroft Nelson, James Maurice Joseph O'Connor, Cecil Aubrey Parker, John Bradley Pine, Victor Reuben Pugsley, Douglas Maclennan Renton, M.A. Oxon, Arthur Riddell, Idris Roberts, Stuart Kerfoot Roberts, Stephen Russell, George Christopher Sadler, Frederick Hugh Samuel, Frank Leslie Sneed, B.A. Durham, Frank Bertram Stableford, Thomas Samuel Steel, Conway William Stidston-Broadbent, David Myrddin Thomas, Colin Huson Walker, Richard Sansum Willes, James Wolstan Wilson, Edwin Walker Wright.

No. of Candidates, 239. Passed, 141.

The following Candidates have passed the Trust Accounts and Book-keeping portion only :—

Willie Andreae-Jones, B.A. Oxon, Francis Reginald Allen Armstrong, B.A. Cantab., Bernard Gordon Ashby, Charles Reginald Ashworth, LL.B. Manchester, James Priestley Aspden, Thomas Henry Attwater, Henry Willis Aubin, Arthur Denis Aylett, B.A. Cantab., Ebenezer Richard Barker, John Richard Bird, Brian Henry Black, B.A. Oxon, Spencer Allen Block, B.A. Cantab., Charles Francis Bridger, Robert Chilton Buchanan, Arthur Carter, Gerald Frederick Chantler, Joseph Cheetham, Alan Roy Cleaver, Charles Leonard Winterforde Codrington, B.A., LL.B. Cantab., Theobald Maurice Cohen, Geoffrey Norman Crowther, Samuel Dalton, LL.B. London, Katherine Mary Davies, George Edward Davison, Clifford Dawson, Frederick John Ritson Dodd, B.A. Cantab., John Robert Emil Droogleever, Edward Harold Duce, William Griffith Dunbabin, Arthur Dunn, Roy Mainwaring Dunstan, Albert Richard Eaton, Dorothy Edith Edwards, Havelock Winston Eginton, Henry Chandler Ellis, B.A. Cantab., Sidney John Ellis, John Lucan Evans, B.A. Cantab., Walter Rowland Cole Evason, Frank Arthur Campbell Fisher, Edward John Oliver Gardiner, LL.B. London, Wilfred Henry Gibbs, Richard Allen Golding, Francis Henry Gerard Heron Goodhart, M.A. Oxon, Brian Chalkley Gould, Geoffrey Clement Gould-Porter, Michael Christian Graham, B.A. Oxon, Robert Gray, Arthur John Green, B.A. Cantab., Frank Harold Green, Kenneth Davison Hanna, Michael Talbot Harraway, Cyril Charles Harrison, John Stephen Hart-Jackson, John Reginald Hassell, B.A. Cantab., Ian Moore Hezlett, M.A. Cantab., Anthony Raby Hieatt, John Michael Hillman, Thomas Edwin Patrick Hopwood, William Francis Horton, Lawrence Cribb Jenkins, Lorence Evelyn Jones, Jessie Margaret Jordan, Allan Frederick Judd, Richard Martin Alford Kingswell, Arthur Clifford Larke, Eric Laycock, Leslie John Leathers, Sidney George Cuthbert Leigh, B.A., LL.B. Cantab., Edward Newton Lever, LL.M. Liverpool, Thomas Jonathan Lewis, Dennis Oswald Collier Littler, Wilfrid Robert Lush, B.A. Oxon, Charles Patrick Home McCall, Donald Alexander Ross Macdonald, B.A. Cantab., Ian Maclean, B.A. Cantab., Thomas Magnay, Cyril Weston Mainwaring, B.A. Cantab., John Hayes Marriott, B.A. Cantab., Charles Archer Marsh, B.A. Cantab., Anthony Adeane Martineau, B.A. Cantab., Robert Craig Mayhew, Maurice Mead, Jack Mee, Ronald Leslie Meech, John Guy Millar, James Moore, Reginald Currer Moorhouse, Alfred Denis Morris, Robert Vernon Mosse, Ronald Clifford Mountford, Helen Mowll, Stanley Edward Naish, B.A. Oxon, Gerald Kinder Nice, Robert More Hilary Noble, B.A. Oxon, Richard Frederick Samson Orchard, Frederick William Beston Pacey, B.A. Oxon, George John Paddock, Alfred John Parish, Leonard Kendall Parry, John Richard Pedley, Michael Theodore Pelloe, John Maurice Finlay Peters, FitzRoy Paget Upsall Phillips, Guthrie Phillips, Edward Whitfield Pigot, Cyril Ernest Charles Reginald Platten, Joseph Alfred Ramsey, Leslie Rayner, David Rice, LL.B. Manchester, Harold Hector Russell, Eric Charles Kendall Sadler, Florence Ruth Saunders-Jacobs, LL.B. London, Barham Savory, Harry Shapero, Patrick Frank Sharpin, Philip Overend Simpson, B.A. Oxon, Reginald William Arthur Smith, Mervyn Hardinge Douglas Snape, Arthur Lindley Soar, Kenneth Floyd Speakman, Norman Riley Spencer, Ernest Frank Stout, Bernard Susman, B.A. Cantab., Charles Wilfrid Graves Taylor, B.A. Cantab., John Bradly Trimmer, John Bigland Tulk-Hart, Kenneth Turnbull, Horace Edward Unicume, Harry George Walden, Frederick Douglas Walker, John William Watts, Lawrence Purcell Weaver, Francis Edmund Webster, Brian Trevor Wellington, John Coverley Whitfield, B.A. Cantab., Edward Basil Wight, Cyril Herbert Wild, Dorothy Joan Williams, Penri Williams, Thomas Elved Williams, LL.B. Wales, Alan James Wood, Flora Kathleen Wood, Jack George Woodman.

No. of Candidates, 286. Passed, 213.

STUDENTSHIPS FOR 1932.

The Council, acting on the recommendation of the Legal Education Committee, have made the following award of three Studentships of the annual value of £40 each, tenable for one year, but renewable at the discretion of the Council :—

Class A.

(Candidates under nineteen years of age.)

Mr. John Rolph Hinton Jeens (educated at Cheltenham College ; not yet articled).

Mr. Robert Morgan (educated at Whitgift Grammar School, Croydon and The Law Society's School; articled to Dr. J. M. Newnham, O.B.E., of Croydon).

Class B.

(Articled clerks having not less than three years to serve.)

Mr. Geoffrey Chapman Godber (educated at Bedford School and The Law Society's School; articled to Mr. J. B. Graham, of Bedford).

Each Studentship is awarded on the condition that the holder proceeds and continues to pursue a course of studies for a Law degree.

Highly commended in Class A:—

Mr. Frank Edward Norman Croucher (educated at Ryde Grammar School and The Law Society's School; not yet articled).

Mr. Peter Proud (educated at Merchant Taylors' School and The Law Society's School; not yet articled).

Societies.

Solicitors' Managing Clerks' Association.

THE NEW PROCEDURE RULES.

Mr. Justice Swift, supported by Mr. Justice Macnaghten, took the chair at a meeting of the Solicitors' Managing Clerks' Association held on the 24th June in the Inner Temple Hall, and Mr. F. W. Beney delivered a lecture on the new procedure rules.

Mr. Beney expressed his belief that the new rules represented only the first instalment of a new scheme of procedure. They only applied to the King's Bench, except that some of the new powers given to judges taking the New Procedure List could be exercised in an action in the Chancery Division. The rules did not apply to actions for libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage (in which a party could demand a jury); they did, however, apply to collision cases. They did not apply to actions commenced before 24th May, 1932, except by the consent of both parties. They did not apply when the plaintiff alleged fraud; nor to cases commenced in a district registry other than Liverpool and Manchester, except by transfer order. With these exceptions they applied to any action in which no matters of unusual complexity arose. A case could be brought under them on the application of the plaintiff or the defendant, but only if the party applying was represented by a solicitor. A managing clerk, Mr. Beney considered, could not sign this certificate in his own name, although he thought a solicitor was entitled to give a certificate on the recommendation of his managing clerk if he considered from a general idea of the case that it was suitable. The words "complexity or other circumstances" were very vague and would need to be elucidated by judicial pronouncement. Mere length seemed to be no ground for exclusion. The judge had an absolute discretion to take out of the list any case he thought fit.

Claim and Defence.

Under r. 4 the plaintiff might at the time of the service of the writ, or within seven days of entry of appearance, deliver a statement of claim with all proper particulars. There seemed to be nothing in the rules to vary Ord. XIX, r. 9, which provided that any pleading over ten folios in length must be printed. All the rules of that Order seemed to apply to the new procedure, except that part of r. 2 which dealt with times for delivery of pleadings, and r. 28, which dealt with shipping collisions. If the statement of claim was not delivered with the writ under r. 4 the question arose whether it could be delivered until after the defendant had appeared. Mr. Beney thought that delivery, if not effected with the writ, must be postponed until after appearance had been entered, when it must be delivered within seven days. If the defendant failed to appear, Ord. XIII would presumably apply in the ordinary way.

Under r. 5 appearance must be entered by the defendant eight days after the service of the writ; if the statement of claim was delivered with the writ, the defence was due within another four days—twelve days altogether. Mr. Beney considered that the distinction was a little unfortunate. He foresaw many applications for extensions of time being made and granted on the ground that the statement of claim was not delivered with the writ.

The defence must precede any application for particulars. This provision was clearly intended to carry out the main object of saving delay and expense. Orders XIX and VIIB [305] had been framed with this object in 1919, but had failed probably because of the vagueness of the word "desirable." It would be necessary to consider some revised provision for payment into court; and a defendant, when he put in his defence, should have proper particulars given him of the amount of the claim. At present, unless he asked for an extension of time and was granted an order for particulars in the meantime, it did not seem that he could ascertain the amount.

In rr. 5 (2) and 6 the defendant might with his defence set up a counter-claim with all proper particulars; where he had set up a counter-claim or defence to which a reply was necessary, the plaintiff must within seven days of the delivery of the defence deliver a reply, including the defence to the counter-claim, if any. It seemed that the defendant could join as a defendant to his counter-claim some party other than the plaintiff, as he could under s. 39 of the Judicature Act, 1925. The third party brought in by counter-claim would then have twelve days to deliver his reply, so that it should be delivered at least two days before the summons for directions had to be taken out. Third parties, under Ord. XVIA, a comparatively new order, were in a somewhat different position. The procedure was much wider than it had been under the old third party rules, and would fit well into the new procedure. The summons for directions under r. 7 might precede the summons for directions under the third party procedure, which seemed a little inconvenient. Under r. 7, within seven days of the delivery of the defence or of the reply, the plaintiff must take out a summons for directions returnable in not less than four days before one of the judges taking the New Procedure List. Under Ord. XVIA the third party notice had to be served within the time for delivering the defence, and the third party had then eight days for appearance. Mr. Beney suggested that in such cases the defendant, as soon as he received the statement of claim, should apply for leave to join the third party and also to extend the time for the summons for directions under r. 7 until after the appearance by the third party. This would enable both the summonses—in the main action and in the third party proceedings—to come on together. When the case was transferred to the New Procedure List under Ord. XII, new r. 17 (*a*) or Ord. XIV, new r. 8 (*c*), the order transferring should specify the time within which a summons for directions under the new procedure was to be issued.

Summons for Directions; Powers of the Judge.

Summonses under the new procedure were issued in the Crown Office of the Associate's Department. On the issue of the summons one copy of the writ and all other pleadings must be lodged at the Crown Office for the use of the judge. At present all summonses were heard by the judge, but he could delegate the power of hearing to a master.

Rule 8 laid down some of the new powers which the judge had to exercise on the summons for directions which vitally affected the conduct of the trial, and the ultimate rights of the parties might be decided indirectly under this summons without trial except by leave. The lecturer suggested that the appropriate time to bring in counsel was on the summons for directions. He had probably already settled a pleading in the case. The summonses under the old procedure were never or very rarely attended by counsel and were utterly different from summonses for directions under the new procedure.

Under sub-r. (2) (*a*), unless there had been some serious omission to give proper particulars in the first instance, the cost of the summons would probably always be made costs in the cause. The latter part of the sub-rule laid down that where a plaintiff had failed to give sufficient particulars of his claim the judge might make such order for further and better particulars and as to costs occasioned by such default as he might think fit, or might, in allowing an order for further particulars, order the action to be transferred to the ordinary list, or the counter-claim to be excluded. Mr. Beney did not see why transference to the ordinary list or the exclusion of a counter-claim should be an alternative to ordering particulars.

Paragraph (*b*) dealt with discovery of documents and notice to admit facts. The judge would probably order lists of documents unless an affidavit was asked for. Inspection of documents was governed by the existing Ord. XXXI, rr. 15 and 19. Notice had to be given, and five more days had to elapse before the inspection. It was necessary to consider the probable length of time required for copying in making a decision on how soon one might safely say that the case could be ready for trial. The existing Ord. XXXII, r. 4, provided that notice to admit facts must be given at least nine days before the date for which notice of trial had been given. Under the old procedure this gave plenty of time to produce evidence to prove facts and documents the admission of which was refused. Under the new procedure, however, time was so important that it might be necessary

to curtail the time allowed for admitting facts and answering interrogatories. The judge might well delegate to the master, under r. 13, further applications by either side on such matters. Applications to the master under the new procedure should be returnable at a day's notice, and the master should give a set time for hearing them so as to obviate any undue delay.

Sub-rule (2) (*c*) provided that the judge might order the action to be set down for trial as a new procedure action. If the action was kept in the New Procedure List and the date of trial fixed, the action must be entered for trial on the same or the next day; no notice of trial was necessary.

By (*d*) the judge might order the action to be transferred from the New Procedure List to the ordinary list, and might correct any error the solicitor might have originally made in certifying. Under (*e*) he might order the action to be set down for trial at assizes. New procedure cases were at present only tried in London, and district registry cases, other than those of Liverpool or Manchester, were generally ordered to be tried at assizes.

Under (*f*) the judge might exercise any statutory power in force with a regard to the transfer or remission of an action from the High Court to the county court. County courts were speedy and fairly cheap tribunals and, with very few exceptions, satisfied the litigant.

By (*g*) the judge might order the action or any issue therein to be tried by a jury or without a jury as he thought fit. The somewhat slow and uncertain trial by jury would probably become an exception under the new procedure.

Under r. 8 the judge might also, under (*h*), specify the maximum number of expert witnesses to be called. Hitherto, the number had been restricted chiefly by the Taxing Master and the views of the trial judge, and it seemed a pity not to allow those factors to remain.

The judge, under (*k*), might record any consent of the parties either wholly excluding their right of appeal or limiting it to the Court of Appeal or to questions of law only. The lecturer considered that solicitors would not be wise so to restrict their clients' rights without consulting them and perhaps counsel also.

SPECIAL REFEREES.

Sub-rule (3), an important rule of which considerable use might be made, gave the judge power to refer to an expert matters concerning the extent and permanence of any injury alleged to have been caused by the negligence of a party. Agreement was more likely to result if the special referee examined the injured person in the presence of the doctors of both sides; it should save much expense.

Sub-rule (4) conferred on the judge all the powers of a court or judge in respect of an action in the ordinary list, and laid down that in exercising them he should have special regard to the desirability of saving time and expense and to his power of transferring from the New Procedure List to the ordinary list. Sub-rule (5), said the lecturer, would probably sooner or later come before the Court of Appeal, for it laid down that there should be no appeal from the decision of the judge except by his leave. The question might arise whether the sub-rule applied to a decision given under the ordinary powers conferred on the judge by sub-r. (4), or whether it only applied to decisions given under the new powers expressly conferred by r. 8. The lecturer thought that the right of appeal would not be taken away merely because those powers were exercised in a new procedure action, and that it was only intended to take away the right of appeal from decisions given under the express powers conferred by r. 8.

A motion for judgment in default of appearance had been brought in the new procedure list and had been heard. It seemed, therefore, that motions for judgment in new procedure cases would be heard by the judge taking the New Procedure List. In another case, the defendant had been given leave on a summons for directions to serve a third party notice and a statement of claim on the third party by substituted service; the ordinary requirements of Orders X and XVIA seemed to have been dispensed with. The lecturer considered that this case was probably an exceptional one, and that in future parties would be well advised to file an affidavit under r. 10 showing grounds for their application.

A defendant had asked to have an action remitted to the county court for lack of means; a summons had been pending before the master. The court had made a somewhat novel order which might be used as a precedent: it had dismissed the application to remit, but had ordered that instead of the plaintiff being ordered to give security, the costs of the action should be on no higher scale than would apply in the county court.

An interrogatory had been allowed in a money-lending case on a summons for directions. The lecturer suggested that it would be better either to bring the matter before a judge or to have it dealt with by the master if the judge saw fit to empower him to do so under Ord. XIII.

The Chairman emphasised that the rules were an experiment and that the judges needed the help of the legal profession to make them a success. If that help were forthcoming they would be a success, but their object would ultimately have to be carried out in any case. The Rules Committee had decided that the procedure should first be exercised voluntarily; if this did not clear the lists the powers would certainly be made compulsory. When an action came into the New Procedure List it would be shepherded from the writ to the judgment so that it was neither delayed itself nor held up other cases. There was no desire to hurry or embarrass anybody nor to drive litigation away; the whole desire was to bring litigation back again into the courts from which it was drifting. The whole object of the rules was to encourage and help the litigants who came into the list.

Some of Mr. Beney's criticisms were sound, and there was no answer to them; the new rules would have to be amended where experience showed that amendment was required. Some of his points were bad and could be answered quite simply; but in the ordinary conduct of daily business a solicitor or barrister confronted with a doubtful point had only to come to one of the officers of the court—the practice master, the chief clerk or the associate—and he would be given every possible assistance. If this assistance failed, counsel could make an *ex-parte* application to Mr. Justice Macnaghten, who would assist him on every point.

Mr. Justice Macnaghten confirmed the Chairman's assurance that the judges taking the new list wished to give every possible assistance to litigants and their advisers. This country possessed a uniquely flexible system of procedure, and the only complaint which could be made against it was that that flexibility had not been used to the extent to which it might have been used if people had appreciated that changes in the procedure were necessary.

Rules and Orders.

THE COUNTY COURT DISTRICTS (MISCELLANEOUS NO. 2) ORDER, 1932. DATED JUNE 29, 1932.

1.—(1) The District of the County Court of Dorsetshire and Hampshire held at Poole and Bournemouth (hereinafter called the existing Court) shall be divided into two Districts in the manner following:—

(*a*) The parishes set out in the first Schedule to this Order shall form a separate district in which a Court shall be held at Bournemouth by the name of the County Court of Hampshire held at Bournemouth;

(*b*) The parishes set out in the second Schedule to this Order shall form a separate district in which a Court shall be held at Poole by the name of the County Court of Dorsetshire held at Poole;

(*c*) That part of the parish of Saint Leonards and Saint Ives which immediately before the coming into operation of the County of Southampton Review Order, 1932, constituted part of the parish of Hurn shall be transferred to, and form part of, the district of the County Court of Hampshire held at Ringwood.

(2) That part of the parish of Lytchett Minster which immediately before the commencement of the Dorset (Corfe Mullen to Lytchett Minster) Confirmation Order, 1930, constituted part of the parish of Corfe Mullen, shall cease to form part of the district of the County Court of Dorsetshire held at Wimborne Minster.

2. The County Court of Hampshire held at Bournemouth and the County Court of Dorsetshire held at Poole shall have concurrent jurisdiction to deal with any proceedings which shall be pending in the existing Court when this Order comes into operation.

Provided that the Registrar of those Courts, under the direction of the Judge, shall have power to determine in which of the said Courts held at Poole and Bournemouth respectively any such proceedings shall be continued after the commencement of this Order.

3. The parishes set out in the first column of the third Schedule to this Order shall be detached from, and cease to form part of, the County Court districts set opposite to their names respectively in the second column of the said Schedule, and shall be transferred to, and form part of, the County Court Districts set opposite to their names respectively in the third column thereof.

4. In this Order "parish" shall mean a place for which immediately before the first day of April 1927 a separate Poor Rate was or could have been made or a separate Overseer was or could be appointed.

Provided that, unless the contrary intention appears, the boundaries of every parish mentioned in this Order shall be those constituted and limited at the date of this Order.

5. This Order may be cited as the County Court Districts (Miscellaneous No. 2) Order, 1932, and shall come into operation on the 1st day of July, 1932, and the County Courts (Districts) Order in Council, 1899,(*) as amended, shall have effect as further amended by this Order.

Dated the 29th day of June, 1932.

Sankey, C.

SCHEDULE I.

Bournemouth.	Hurn.
Christchurch.	Sopley.
Christchurch East.	

SCHEDULE II.

Lytchett Matravers.	Poole.
Lytchett Minster.	

SCHEDULE III.

First Column. Parishes.	Second Column. County Court Districts.	Third Column. County Court Districts.
	Sussex.	*Sussex.*
Newtimber	Haywards Heath	Brighton and Lewes.
Pyecombe	Haywards Heath	Brighton and Lewes.
Clayton	Haywards Heath	Brighton and Lewes.
Horsted Keynes	Haywards Heath	East Grinstead.

*S. R. & O. 1899, No. 178, printed as amended to 1903, S. R & O. Rev. 1904, III, County Court, E., p. 1.

Legal Notes and News.

Professional Announcements.

(2s. per line.)

Owing to the death of Mr. N. S. Hedderwick, Messrs. Morten Cutler & Co. have acquired the practice of Messrs. Stanley Hedderwick & Co., which they will carry on under that name at 17, Old Queen-street, Westminster, S.W.1; they will continue to practice under their own name at 99, Newgate-street, E.C.1.

FIVE PER CENT. WAR LOAN CONVERSION.

FUNDS IN COURT.

The following notice has been issued from the Lord Chancellor's office :—

Any person interested in any holding of Five Per Cent. War Loan standing in the name of the Accountant-General of the Supreme Court in any cause or matter in the Supreme Court, should, if he desires the holding to be continued as 3½ per cent. War Loan and the bonus of one per cent. to be paid, apply to the Court not later than Monday, 25th July, for an Order directing the Accountant-General to make a continuance application.

Any person interested in any such holding who desires repayment in cash should apply to the Court not later than Monday, the 19th September, for an Order directing the Accountant-General to make a repayment application.

Court fees will be remitted on any such application which relates solely to continuance or repayment.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP I. MR. JUSTICE EVE.	MR. JUSTICE MAUGHAM.
			Witness. Part I.	Non-Witness.
M'nd'y July 11	Mr. Jones	Mr. More	Mr.*Ritchie	Mr. Andrews
Tuesday .. 12	Ritchie	Hicks Beach	*Andrews	More
Wednesday 13	Blaker	Andrews	*More	Ritchie
Thursday . 14	More	Jones	Ritchie	Andrews
Friday 15	Hicks Beach	Ritchie	*Andrews	More
Saturday .. 16	Andrews	Blaker	More	Ritchie
	GROUP I.		GROUP II.	
	MR. JUSTICE BENNETT.	MR. JUSTICE CLAUSON.	MR. JUSTICE LUXMOORE.	MR. JUSTICE FARWELL.
	Witness Part II.	Non-Witness.	Witness. Part II.	Witness Part I.
M'nd'y July 11	Mr. More	Mr. Blaker	Mr.*Jones	Mr.*Hicks Beach
Tuesday .. 12	*Ritchie	Jones	Hicks Beach	*Blaker
Wednesday 13	Andrews	Hicks Beach	*Blaker	*Jones
Thursday . 14	*More	Blaker	Jones	*Hicks Beach
Friday 15	Ritchie	Jones	*Hicks Beach	Blaker
Saturday .. 16	Andrews	Hicks Beach	Blaker	Jones

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

VALUATIONS FOR INSURANCE. It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is frequently very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac, a speciality. 'Phone: Temple Bar 1181-2.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement Thursday, 21st July, 1932.

	Middle Price 6 July 1932.	Flat Interest Yield.			†Approximate Yield with redemption		
		£	s.	d.	£	s.	d.
English Government Securities.							
Consols 4% 1957 or after	105xd	3	16	2	3	13	10
Consols 2½%	70	3	11	5	—		
War Loan 5% 1929-47 Assented	99½xb	3	11	0	—		
War Loan 4½% 1925-45	102	4	8	3	—		
Funding 4% Loan 1960-90	106	3	15	6	3	13	1
Victory 4% Loan (Available for Estate Duty at par) Average life 31 years ..	105½	3	15	10	3	13	6
Conversion 5% Loan 1944-64	113	4	8	6	3	12	11
Conversion 4½% Loan 1940-44	106½	4	4	6	3	11	1
Conversion 3½% Loan 1961 or after ..	97	3	12	2	—		
Local Loans 3% Stock 1912 or after ..	82	3	13	2	—		
Bank Stock	315	3	16	2	—		
India 4½% 1950-55	99½	4	10	5	4	10	9
India 3½% 1931 or after	79½	4	8	1	—		
India 3% 1948 or after	68	4	8	3	—		
Sudan 4½% 1939-73	104½xd	4	6	1	3	14	0
Sudan 4% 1974 Redeemable in part after 1950	106	3	15	6	3	10	11
Transvaal Government 3% Guaranteed 1923-53 Average life 13 years	96½	3	2	2	3	6	9
Colonial Securities.							
Canada 3% 1938	95½	3	2	10	3	17	0
*Cape of Good Hope 4% 1916-36	101	3	19	2	—		
Cape of Good Hope 3½% 1929-49	91½	3	16	6	4	4	2
Ceylon 5% 1960-70	108xd	4	12	7	4	9	10
*Commonwealth of Australia 5% 1945-75	100½	4	19	6	4	18	11
Gold Coast 4½% 1956	104	4	6	6	4	4	6
*Jamaica 4½% 1941-71	104	4	6	6	3	19	3
*Natal 4% 1937	101	3	19	2	3	15	0
New South Wales 4½% 1935-45	90½	4	19	5	5	10	11
*New South Wales 5% 1945-65	98½	5	1	6	5	1	10
*New Zealand 4½% 1945	99½	4	10	5	4	11	1
*New Zealand 5% 1946	103½	4	16	7	4	12	9
Nigeria 5% 1950-60	110xd	4	10	11	4	3	11
*Queensland 5% 1940-60	98½	5	1	6	5	2	0
*South Africa 5% 1945-75	105½	4	14	9	4	8	9
*South Australia 5% 1945-75	99½	5	0	6	5	0	7
*Tasmania 5% 1945-75	98½xd	5	1	6	5	1	9
*Victoria 5% 1945-75	98½	5	1	6	5	1	9
*West Australia 5% 1945-75	99½xd	5	0	6	5	0	7
Corporation Stocks.							
Birmingham 3% 1947 or after	81½	3	13	7	—		
*Birmingham 5% 1946-56	111½	4	9	8	3	18	5
*Cardiff 5% 1945-65	108½	4	12	2	4	2	10
Croydon 3% 1940-60	88	3	8	2	3	13	11
*Hastings 5% 1947-67	108	4	12	7	4	5	4
Hull 3½% 1925-55	87½xd	4	0	0	4	7	6
Liverpool 3½% Redeemable by agreement with holders or by purchase	92½	3	15	8	—		
London County 2½% Consolidated Stock after 1920 at option of Corporation ..	67½	3	14	1	—		
London County 3% Consolidated Stock after 1920 at option of Corporation ..	81½	3	13	7	—		
Manchester 3% 1941 or after	81xd	3	14	1	—		
Metropolitan Water Board 3% "A" 1963-2003	83	3	12	3	3	13	5
Do. do. 3% "B" 1934-2003 ..	84½	3	11	0	3	12	2
Middlesex C.C. 3½% 1927-47	97xd	3	12	2	3	15	3
Do. do. 4½% 1950-70	108	4	3	4	3	17	6
Nottingham 3% Irredeemable	78½	3	16	5	—		
*Stockton 5% 1946-66	106½xd	4	13	11	4	7	6
English Railway Prior Charges.							
Gt. Western Rly. 4% Debenture	94½xd	4	4	8	—		
Gt. Western Rly. 5% Rent Charge ..	103xd	4	17	1	—		
Gt. Western Rly. 5% Preference	66½	7	10	4	—		
L. Mid. & Scot. Rly. 4% Debenture ..	91	4	7	11	—		
L. Mid. & Scot. Rly. 4% Guaranteed ..	72	5	11	1	—		
L. Mid. & Scot. Rly. 4% Preference ..	33	12	2	6	—		
Southern Rly. 4% Debenture	92	4	6	11	—		
Southern Rly. 5% Guaranteed	96	5	4	2	—		
Southern Rly. 5% Preference	51	9	16	0	—		
‡L. & N.E. Rly. 4% Debenture	81	4	18	9	—		
‡L. & N.E. Rly. 4% 1st Guaranteed ..	60½	6	12	3	—		
‡L. & N.E. Rly. 4% 1st Preference ..	23	17	7	9	—		

*Not available to Trustees for purchase over par.

†In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other stocks, as at the latest date.

‡These Stocks are no longer available for trustees, either as strict Trustee or Chancery Stocks, no dividend having been paid on the Company's Ordinary Stocks for the past year.

INFORMATION REQUIRED.

2s. per line.

WRATHALL.—Wanted, Information of the relatives and next-of-kin of JOHN HITCHING WRATHALL (a butcher), who lived in London-road, Manchester, many years ago, and who was a son of the late William Wrathall. Also of HANNAH DALE (aunt of John Hitching Wrathall), who married a William Dale and who was a daughter of Robert and Isabella Burrows—the said Hannah Dale was born on 26th January, 1807, and married William Dale in 1830—she died in February, 1861. Information is required as to any children she may have had. The said Robert Burrows was a butcher in Manchester and he died in February, 1827, and his wife, Isabella Burrows, died in 1857.—Apply to Farrar & Co, Solicitors and Notaries, 79, Fountain-street, Manchester.

RE WALTER HEPWORTH COLLINS, decd.—Will anyone who has WITNESSED a WILL or POSSESSES a WILL or DEED-BOX of above deceased COMMUNICATE at once with J. T. PRIESTLEY, Esq., Solicitor, 105, Church-road, Hove, Sussex.

WILL HENRY JONES, late of Devonshire-square, London, or anyone knowing his whereabouts, please COMMUNICATE with his son, Harry Jones (late of Victorian Railways), 15, O'Connor-street, Reservoir, Victoria, Australia?

NEWBERY.—Any Solicitor or other person having POSSESSION or KNOWLEDGE of, or who witnessed, a WILL made by the late Mrs. ALMA SARAH NEWBERY (formerly SARAH ISAACS), who resided and died at Streatham, London, S.W., is requested to COMMUNICATE at once with MONTAGU'S and COX and CARDALE, 86-88, Queen Victoria-street, E.C.4.

PERIODICAL SALES.
ESTABLISHED 1843.

H. E. FOSTER & CRANFIELD

conduct PERIODICAL SALES of
REVERSIONS (Absolute and Contingent),
LIFE INTERESTS and ANNUITIES,
LIFE POLICIES,
Shares and Debentures,
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Kindred Interests,
on the FIRST and THIRD THURSDAYS in each month throughout the year, at THE LONDON AUCTION MART, 155, Queen Victoria-street, E.C.4.
Offices: 6, Poultry, London, E.C.2. Telegrams: "Invariably, Stock, London." Tel. No. City 1296 (3 lines).

PERIODICAL PROPERTY AUCTIONS.

H. E. FOSTER & CRANFIELD

beg to announce that their PROPERTY AUCTIONS will be held at THE LONDON AUCTION MART, 155 Queen Victoria-street, E.C.4.
Vendors, solicitors and trustees having properties for sale are respectfully invited to communicate with the Auctioneers, at their Offices, 6, Poultry, London, E.C.2. Telegrams: "Invariably, Stock, London." Tel. No. City 1296 (3 lines).

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Special attention also given to

Valuations; Specifications; Dilapidations; Management of House Property; Compensation Claims; Sales by Private Treaty.

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DR. BARNARDO'S HOMES

CHARTER:

"No Destitute Child ever refused Admission."

No Waiting List. No Votes Required.

112,000 Children have been admitted.
16,628 Children and young people dealt with last year.
8,200 Children now being supported.

Bequests should be left to—
DR. BARNARDO'S HOMES:
NATIONAL INCORPORATED ASSOCIATION,
18 to 26, Stepney Causeway, London, E.1.
Bequest Forms on application to the General Secretary
Tel.: East 1098 (General Secretary's Office).
Cheques payable "Dr. Barnardo's Homes" and crossed "Barclays Bank Ltd., a/c Dr. Barnardo's Homes."
Head Offices—18 to 26 Stepney Causeway, London, E.1

Miss SMALLWOOD'S SOCIETY FOR THE ASSISTANCE OF LADIES IN REDUCED CIRCUMSTANCES

Under Royal Patronage.

An Urgent Appeal LEGACIES

The Society needs money—for rents—to buy coal—and to ensure an element of comfort for those who otherwise could not obtain it.

Will you help in this very human cause? Every donation, large or small, is very gratefully accepted.

If you cannot give a substantial amount now, will you kindly think of the Society when you make your will? Legacies help to lay a firm foundation. Will Lawyers kindly advise their clients to help this Society.

Please make Cheques payable to—

MISS SMALLWOOD'S SOCIETY, Lancaster House, Malvern.

WILL YOU HELP?

SPURGEON'S ORPHAN HOMES

Founded for the benefit of necessitous Fatherless Children by CHARLES HADDON SPURGEON

who advised a would-be benefactor on promising to put the Orphanage in the corner of his Will:

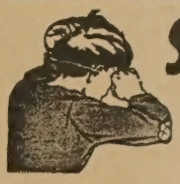
"Don't do that on any account, because if you put it in the corner, you may tear it off some day; kindly put it in the centre and see that it is **DONE IN THE RIGHT WAY.**"

Please remind benevolently-disposed clients, that in acting on this advice they assure a happy childhood in home-like surroundings to many needy fatherless boys and girls, whose training for future citizenship includes Christian character-building.

NEARLY 5,000 HAVE ALREADY BENEFITED.

Our last Annual Report, containing Form of Bequest, will gladly be sent on application to the Secretary.

SPURGEON'S ORPHAN HOMES,
CLAPHAM ROAD, STOCKWELL, S.W.9.
Hon. President: - REV. H. TYDEMAN CHILVERS.
Hon. Treasurer: - ROBERT PERCIVAL HIGGS, Esq.



Somebody must care!

Brutally assaulted, starved, neglected,—SOMEBODY must save such little lives.

The National Society for the Prevention of Cruelty to Children is protecting little ones everywhere.

A remembrance of the claims of children is earnestly sought when preparing charitable bequests.

LEGACIES ARE A VALUABLE HELP.

Contributions to Hon. Treas., Sir G. WYATT TRUSCOTT, Bart., or to Director: WILLIAM J. ELLIOTT.

N. S. P. C. C.

Victory House, Leicester Square, London, W.C.2.
Chairman: The VISCOUNT ULLSWATER.

Telephone: Holborn 0602.

EDE & RAVENSCROFT

FOUNDED IN THE REIGN OF WILLIAM & MARY, 1689.

ROBE MAKERS — COURT TAILORS

BY APPOINTMENT.

TAILORING—SOLICITORS' GOWNS.

Wigs for Registrars, Town Clerks and Coroners.

93 & 94, CHANCERY LANE, LONDON, W.C.2

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BEARD & SON

Will SELL by AUCTION (unless previously sold privately), at the London Auction Mart, 155, Queen Victoria-street, E.C., on Wednesday, 20th July, 1932, at 2.30 p.m. in separate lots, the

FREEHOLD GROUND RENTS AMOUNTING TO £50 5s. PER ANNUM, well secured upon

BAYSWATER.—21, St. Stephen's-road; 28, St. Stephen's-square; 83, Westbourne Park-road; 69A, Richmond-road, and 10-11, Richmond-mews West.

WESTBOURNE PARK.—15, St. Luke's-road.

PUTNEY.—58, Fawe Park-road.

With valuable Reversions about 24 years hence to the full Rack Rentals amounting to £1,007 per annum, also the

INVESTMENT PROPERTIES,

FREEHOLD SHOP AND PREMISES.

	Gross Rents per annum.
BAYSWATER.	
81, Westbourne Park-road	£98 16 0
LEASEHOLD RESIDENCES.	
63, Hereford-road	£236 12 0
72, Hereford-road	£258 14 0
76, Hereford-road	£220 2 8
NOTTING HILL.	
22, Colville-terrace	£301 11 0
8, Tavistock-road	£204 15 0
MAIDA HILL.	
5, Warrington-gardens	£219 10 0

Particulars and Conditions of Sale of Messrs. Welman and Sons, Solicitors, 76B, Westbourne-grove, W.2, and of the Auctioneers,

BEARD & SON,

110, Westbourne-grove, W.2. Telephone, Park 0358.

TO CLOSE ESTATE.

FREEHOLD INVESTMENT arising out of FOUR SHOP PROPERTIES at CLAPHAM JUNCTION. Three let at nominal Ground Rents and one at low Rack Rent, producing altogether £259 per annum. Reversions in 20 and 14 years. Will be Sold at the low price of £5,000.—

Apply:

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In the OLD CHRISTCHURCH-ROAD, for Sale, by Order of Executors. Present rents £2,175, with certain increase in 1935. Lease 59 years unexpired at a ground rent of £44. Will be sold to pay good return after allowance for sinking fund.

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Telephone: HOLBORN 584 (3 lines).

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VALUERS OF LICENSED PROPERTY.

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AUCTIONEERS, VALUERS, SURVEYORS, HOUSE, ESTATE AND FACTORY AGENTS.

407, HOLLOWAY RD., N.7.

Telegrams: "DRIVERS, HOLLOWAY." 'Phones: NORTH 1503, 1504 & 1131.

MUIR, BIGGE & CO.,

Auctioneers and Estate Agents,

58, CONDUIT-STREET, LONDON, W.1,

will offer the following valuable attractive INVESTMENT PROPERTIES by AUCTION, at the LONDON AUCTION MART, on TUESDAY, 19th JULY, 1932, at 2.30 (unless previously sold).

EDGWARE.

QUARTERLY ESTATE, INCOME £1,266 p.a.

TWELVE well-built attractively and variously designed RESIDENCES, with modern conveniences, good frontages and gardens, being Nos. 86, 98, 108, 110, 124 and 126, EDGWAREBURY-LANE, and Nos. 27, 29, 31, 33, 37 and 39, MOWBRAY-ROAD.

Held for a term of 99 years at low ground rents amounting to £91 p.a. Freehold can be acquired.

As a whole or in Two Lots.—Lot 1.

Solicitors: Messrs. DAVIS & DAVIS, 11, Queen Victoria-street, E.C.4; Messrs. COHN, BAX, TOWNSEND & SHARPE, 52, New Broad-street, E.C.2, and 14, Gray's Inn-square, W.C.1.

EDGWARE.

10 and 11, DEANSBROOK-ROAD.

TWO FREEHOLD VILLAS let and producing £152 net p.a.; rentals payable in advance.—Lot 2.

CHISWICK.

45, GROVE PARK-GARDENS.

Pre-war semi-detached LEASEHOLD RESIDENCE, let at low rental of £80 p.a. Held for a term of about 60 years unexpired at ground rent of £12 p.a.—Lot 3.

WALLINGTON.

14, SOUTHVIEW-GARDENS.

LEASEHOLD semi-detached VILLA, let at £55 p.a. Held for a term of about 61 years unexpired at a ground rent of £6 10s. p.a.—Lot 4.

Solicitors: Messrs. COHN, BAX, TOWNSEND & SHARPE.

KENSINGTON, W.8.

10, AIRLIE-GARDENS.

Attractive MEDIUM-SIZE RESIDENCE. Light rooms, open aspect. Six bedrooms, bath, two reception rooms. Term of 47 years at £10 p.a. Vacant possession.

Solicitors: Messrs. FIRTH & Co., 5, Chancery-lane, W.C.2.

By Order of Mortgagees.

HYDE PARK CORNER.

11 and 12, HAMILTON PLACE, PICCADILLY, W.1.

The Direct Crown Lease of this highly important

CORNER BUILDING,

overlooking Green Park, and having combined frontages of 220 feet 4 inches.

Upwards of 50 rooms (some of which are of magnificent proportions), having a net floor space of approximately

13,000 SQUARE FEET.

Passenger and Service Lifts. Central Heating.

To be offered for SALE by AUCTION, with vacant possession, by Messrs.

WM. GROGAN & BOYD

at the LONDON AUCTION MART, 155, QUEEN VICTORIA-STREET, E.C.4, on WEDNESDAY, 20th JULY, 1932, at 2.30 p.m. (unless previously disposed of by private Treaty).

Solicitors: Messrs. Walters and Co., 9, New-square, Lincoln's Inn, W.C.2.

Auctioneers' Offices: 10, Hamilton-place, Park-lane, W.1.

To Solicitors, Trustees and Executors.

DEBENHAM, STORR & SONS, LTD.

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(ESTABLISHED 1813.)

Auctioneers and Valuers of all Classes of Property.

For the Sale of Jewellery, Antique and Modern Silver, Curios, Furniture, China, Choice Furs, Works of Art, etc.

Valuations made in Town and Country for all purposes.

APPLY:

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By Order of Trustees, Executors and others.

ROGERS, CHAPMAN & THOMAS

Will SELL by AUCTION at the MART, 155, QUEEN VICTORIA-STREET, E.C.4, on WEDNESDAY, 20th July, CAPITAL PROPERTIES FOR INVESTMENTS OR OCCUPATION, as follows:—

FREEHOLDS.

FIFIELD, near BRAY.—With vacant possession. The charming genuine Tudor Cottage Residence, Deep Meadows, with modern conveniences, comprising five bed and dressing rooms, fitted bathroom, two reception rooms, kitchen, scullery, &c. Garage, large wood-constructed room, sheds and grounds with apple orchard, in all about 2¼ acres.

MAIDENHEAD.—Attractive Residence, The Cottage, Cliveden Mead, comprising four bed and dressing rooms, fitted bathroom, two reception rooms, domestic offices, and nice garden. With possession.

CHISLEHURST. — Semi-detached Residence. The Garth, Chislehurst-hill. Let at £90 per annum.

BERKHAMSTED (in conjunction with Messrs. W. BROWN & CO., Berkhamsted).—At low reserve. With possession. The detached House, Alton, Kitsbury-road, on high ground, comprising eight-nine bed and dressing rooms, bathroom, three reception rooms, offices and nice garden.

BLACKHEATH.—Pair of semi-detached Houses, Nos. 34 and 36, Hardy-road. Let at £72 and £90 per annum.

SOUTH KENSINGTON.—No. 33, Roland-gardens. Two maisonettes and two flats. One flat vacant possession. Total actual and estimated rentals £615 per annum.

DUNSFOLD, SURREY.—Accommodation or Building Land, about 6¼ acres, with about 715 ft. frontage to the Dunsfold-Chiddingfold road.

LEASEHOLDS.

CHELSEA.—No. 25, Clabon-mews, comprising two garages, with flat of three rooms, kitchen and scullery. Let on lease at £100 per annum.

SOUTH KENSINGTON.—80, West Cromwell-road. Two maisonettes. Let at rentals of £105 and £95 per annum.

WEST HAMPSTEAD.—No. 66, Fordwych-road. Non-basement House, now arranged as three flats. With vacant possession of the whole.

SOUTH KENSINGTON.—No. 2, Lexham-gardens, used in conjunction with adjoining house as private hotel. Let for whole term of 42 years, at £170 per annum.

MITCHAM.—Four modern Houses, Nos. 21, 23, 27, and 29, Wandle-road. Let (three to statutory tenants) at rents ranging from £48 to £90 per annum.

WIMBLEDON.—Three modern Houses, Nos. 8, 9, and 11, Crescent-road. Nos. 8 and 9 let at £100 per annum each. No. 11 with vacant possession.

PUTNEY.—No. 174, West-hill. Arranged as two maisonettes, let at £140 and £115 respectively.

LEASEHOLD GROUND RENTS, £13 per annum net, with nine years' reversion, arising from Nos. 161 and 165, Lower Richmond-road, Putney. Held for 51 years, at 10s. per annum each, underleased for 42 years at £7 per annum each.

All held for long terms at moderate ground rents.

Auction Offices, 37, Bruton-street, W., and at Westminster, South Kensington, and Westgate-on-Sea.

FREEHOLD GROUND RENTS

PER £88 4s. ANNUM,

well secured on 12 good-class houses in Central London, with

VALUABLE REVERSION

in under six years.

PRICE £6,000.

Sole Agents, DUNCAN B. GRAY and PARTNERS, 129, Mount-street, W.1.

OFFICES TO LET

In large or small suites.

John Street, Bedford Row, Chancery Lane, High Holborn, Lincoln's Inn Fields, Strand, &c.

Apply—

HAROLD WILLIAMS, HOLLIDAY AND PARTNERS,

Chartered Surveyors,

(HOL. 5365.) 49, CHANCERY LANE, W.C.2.

REQUIRED IMMEDIATELY.

FREEHOLD GROUND RENT SECURITIES

for numerous Funds of £500 to £20,000.

Vendors are invited to communicate with

CHESTERTON & SONS, 116, Kensington High Street, W.8.

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